THE CRIMINAL REPORT

VOL - SIXTH, PART- I.

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CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT AND PEAREE MYRANEE

versus

SOOFUL LOHAR (No. 18,) NEMAE SOW MUNDLE (No. 19,) RADHANATH DAN (No. 20,) AND MOOLEERAM DAN (No. 21.)

Beerbhoom.

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Case of SOOFUL LOHAR and others.

In appeal one prisoner convicted of dacoity with torture; the remaining prisoners acquitted, the evidence being discredited.

CRIME CHARGED.—1st count, dacoity attended with torturing Pearee Myranee, plaintiff, and plunder of property valued at Rs. 4,214-6; 2nd count, knowingly receiving and retaining property acquired by committing the above dacoity.

CRIME ESTABLISHED.—Dacoity with torture.

Committing Officer.—Mr. A. R. Thompson, officiating magistrate of Beerbhoom.

Tried before Mr. F. Lowth, sessions judge of Beerbhoom, on the 18th February, 1856.

Remarks by the sessions judge.—This case was tried under Act XXIV. of 1843. The prisoners, charged with dacoity and torture of the prosecutrix, and robbing her of rupees and property to the amount of Rs. 4,214-6, pleaded not guilty.

The prosecutrix is an old widow woman and in consequence of the Sonthal insurrection had fled from her house in *Rajbundh Palasee*, where her sister's husband had been murdered by the insurgents, and taken up her temporary residence with her family in mouzah *Kadadihee*, where the prisoner No. 19 resided; her husband and brother-in-law appear to have conducted a considerable trade as merchants and to have possessed a large sum of ready money, a good portion of which the Sonthals appropriated, but the prosecutrix managed to bring away some 3,000

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Rupees in cash with other valuables, which she secreted in the flooring of the house temporarily occupied by her as above stated.

It is clear from the deposition of the prosecutrix and her witnesses, Parbuttee Myrance, Bilassee Gwalance, and Ramkanai Pal, that on the night in question, or 3rd Poose last, the house in which they resided was forcibly entered by dacoits, some six in number, and goods and property to a large amount plundered and carried away; it is also fully proved by the same witnesses and those of the *sooruthal*, that the prosecutrix received personal injuries from the dacoits on that occasion; the prosecutrix and her witnesses, Parbuttee and Bilassee, distinctly pointed out both before the police and magistrate, and in this court also swear to Nemae Sow Mundle, as the party who inflicted those injuries by burning her with the lighted *mussal;* the evidence adduced by the prisoners in their defence is favorable to their character and on that account doubts might have been entertained as to the correctness of the accusation against them, but neither in the mofussil, nor before the magistrate, nor in this court has any plea been offered by them to show that any ill-feeling or enmity existed between them and the prosecutrix, to account for such a serious charge being preferred; and throughout the trial, the depositions of the prosecutrix and witnesses, Nos. 1 and 2, have steadily and consistently shown the prisoners, Nemae and Mooleeram, to have been of the number who entered the house on the night in question and were clearly *identified* by them by the light of the *mussal:* the prisoner, Sooful Lohar, has pleaded before this court to having been induced by the police to record a confession implicatory of himself and others, but he has failed to produce any proof of such being the fact, and from the witnesses before the court, every enquiry has been made to ascertain the truth or otherwise of such assertion, but it does not appear that any maltreatment or force was used to extract a confession before the police, and in that before the magistrate no plea is raised of such ill-treatment being exercised; I see therefore no reason to doubt the correctness of those confessions, from which it also appears that the prisoners, Nos. 19 and 20, were the *principals* in the dacoity, and the prisoner No 18 himself received from him the cloth, No. 5, found in his house; it appears that at the time of the prosecutrix quitting *Rajbundh Palasee*, the prisoners, Nos. 20 and 21, were aware of her taking with her a quantity of property and sums of money, and when she took up her residence at *Kadadihee*, they also resided in the house of Nuddeah Chand Sow, close to, and in the same compound with, that of prisoner Nemae; there can be no doubt therefore that the prisoners, Nos. 20 and 21, were the instigators of the dacoity, and finding the prosecutrix unprotected by any male adherents, they planned and effected

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the robbery with the aid of the prisoners, Nos. 18 and 19, and others, not arrested: as no reason whatever has been shown or even assigned for this charge having been preferred out of malice or from any improper motive, and the evidence for the prosecution clearly shows the prosecutrix to have been possessed of considerable property on her coming to the village *Kadadihee*, and the witnesses to the *sooruthal* depose to their having seen the holes in the floor of the house where the money vessels had been buried, I see no reason to doubt her claim, though large in amount, and as the prisoner No. 18, has confessed his own guilty participation in the crime both before the police and magistrate, and the prisoners Nos. 19 and 20 are implicated therein, and portions of the stolen property have been recovered from their houses, and prisoners Nos. 19 and 21 were clearly identified by the prosecutrix and her witnesses on the occasion, and the three prisoners, Nos. 19, 20 and 21, are shown to have resided in the same *baree* at the time of this occurrence, I have no doubt whatever of their guilt; the evidence for the defence is favorable to the prisoners, merely in point of character, but altogether fails to exculpate them from the charge; on the contrary that for the defence of Nemae, shows his house to have been plundered only a short time before by the Sonthals, when most of his property was taken; the witnesses produced to identify the rings, Nos, 1 and 2, found in his house and declared to have belonged to his mother, with the exception of Umbica Churn Sikaro, who deposes to having made them, are not persons likely to have so examined the rings on the hand of the female named as to identify them at a future time, and from the manner and hesitation with which they gave their evidence, I place no confidence in their testimony, and that of Umbica Churn above named is equally undeserving of belief, inasmuch as three of the rings, marked No. 2, are perfectly plain and have no mark whereby he could identify them, and on that marked No. 1, he specifies no particular mark to exist, and similar to it, many females are known to possess rings, and further, though neighbours of the prisoner, three out of four other witnesses plead inability to identify the rings, and declare the prisoner's mother to have worn no rings since the date on which his house was plundered in Sawun; I therefore place no reliance on the evidence of any of these witnesses, and reject it accordingly.

The prisoner No. 20 has produced five witnesses to prove an *alibi* and identify the *madoolee*, No. 3, found in his house, but I place no faith on their depositions, inasmuch as none of them are able to speak to the *day* in which the prisoner left his house with them to search for his cattle, though they distinctly swear to the 3rd Poose being the *date*, and respecting their success in the recovery of cattle, discrepancies exist which render such evidence valueless, and four of the five witnesses are r[illegible]able

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to speak with any certainty as to the *madoolee* being the property of the prisoner, I therefore reject the evidence of these witnesses also, and as the witnesses cited by the prisoner No. 21, merely testify to their having seen up to 9 P. M. of the night in question, their evidence does not in any way exculpate him from the charge : under these circumstances and as the witnesses of the prosecutrix are females of her family and are therefore in every respect the most likely persons to identify her property, and they distinctly swear to the articles Nos. 1, 2, 3 and 5, being her property, and the record shows the prosecutrix to have selected the rings and *madoolee* out of a number of other articles and similar ornaments found in the houses of prisoners Nos. 19 and 20, and swore to them alone and laid no claim to the rest, I have no doubt of the property in question being her's and of her title to it, but with regard to the rupees found in the house of prisoner No. 20, no evidence of a satisfactory character has been adduced, and they must therefore be returned to him : as the record shows the prosecutrix to have been much maltreated by the dacoits, and advantage was taken of her unprotected condition, and the prisoner, Nemae Sow Mundle, is proved to have been the person who burnt her with the lighted *mussal*, I consider him deserving of more severe punishment than the rest, and therefore sentence him to imprisonment with labor and irons for fourteen years and two years in lieu of corporal punishment, making a total of sixteen years, and the prisoners Nos. 18, 20 and 21, to imprisonment for fourteen years with labor and irons and all the prisoners severally and jointly to pay a fine of Rs. 4,201-14 under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present : Messrs. H. T. Raikes and J. S. Torrens.) The sessions judge has convicted the prisoners Nos. 19, 20 and 21, on the evidence of the prosecutrix and two females living with her, all of whom speak to the recognition of these prisoners on the night of the dacoity. He also alludes to the confessions of Sooful No. 18, before the darogah and the magistrate, as corroborating the statements of the women, and the discovery of property in the possession of all the prisoners.

We find the record discloses that the dacoity was committed on the 17th of December, and that the prosecutrix first intimated the occurrence to the authorities by a petition to the magistrate on the 24th idem. She allows that during that interval she only mentioned to Sham Laha, four days after the robbery, the names of Nemae No. 19, and Mooleeram No. 21, and these are the individuals indicated by her and the two women living with her, to the police when they commenced their investigations on the spot. The first person they apprehended was Sooful, prisoner No. 18, not named by the women, but on some report reaching a burkundaz that this man had, in

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his possession a *saree*. Sooful however confessed and implicated the other two accused by the women and in their houses two rings, a *madoolee*, or gold bead, and 139 rupees were found, to which prosecutrix laid claim.

This comprises all the proof against the prisoners; that which most directly implicates them is the recognition at the time; but on this part of the evidence, there is much room for doubt. If, as stated by the women, this recognition really took place, no sufficient reason is assigned for the delay in acting upon it. A neighbour also states that he came to the house while the robbery was in progress, and was driven away by the dacoits, and could not recognise any one as their faces were concealed with clothes; that prosecutrix told him afterwards the names of the prisoners, yet he never attempted to give any assistance by reporting the crime. In fact, the acts of all concerned, lead to the conclusion that the robbers were unknown, and that suspicion led subsequently to the accusation of the principal prisoner.

It appears that Nos. 20 and 21, had also left the village in which the prosecutrix had resided and had come to the village of Kadadihee with the same object as herself, and had taken up their abode with Nemae prisoner No 19, a Mundul of the village. Supposing the robbers to have been unknown to the prosecutrix, it is easy to conceive her suspicions would turn on those, who were likely to have known of the money she had with her; and they would naturally include the man with whom these persons were living. This seems the most reasonable way to account for the prosecutrix's complaint having been made so many days after the robbery; had she really recognised the prisoners, there could have been no reason for delay, as promptness was the only chance she had of securing the prisoners and recovering some of her lost property. The prisoners are also persons of substance; have hithert been considered respectable; and never before accused of crime.

The confession of Sooful is made under suspicious circumstances, and the reasons assigned as the grounds of his arrest are not substantiated by any evidence on record. His implication of the other prisoners is only in a general way, and with an obvious avoidance of all details, by which its credibility might be tested. The articles of property found in the prisoner's houses are as well identified by their witnesses as they can be, consisting of such trifles as might be found in any householder's possession.

Under a consideration of all these circumstances we think the evidence against Nos. 19, 20 and 21, far too unsatisfactory to convict upon, and therefore direct their release.

Sooful's confession and the production of property is sufficient to establish his guilt; he was, in our opinion, led to implicate

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the other prisoners with a view to strengthen the evidence of the women against them. With the sentence passed on him, we see no reason to interfere.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

TRIAL NO. 1.

GOVERNMENT

versus

CHUNDER SIKOR SIRCAR (No. 12,)* MADHUBCHUNDER MOZUMDAR (No. 13,) SEETUL SIRCAR (No. 14,) SUBDAL ALIAS SUFFEROODDEEN SIRCAR (No. 15,) SOMUS PRAMANICK (No. 16,) SOOJYE MUNDLE (No. 17,) GAZEE TAKAJGEER (No. 18,) BHAJUN SIRCAR (No. 19,)* PROTAP SIRCAR (No. 20,)* NAZIR MUNDLE (No. 21,) GOURSOONDER CHOWDRY (No. 22,) GOBINDCHUNDER SIRCAR (No. 23,)* MOMEEN CHOWKEEDAR (No. 24,)* RAMKOMUL SIRCAR (No. 5,) AND ARUJULLAH ALIAS AJMUTTULLAH (No. 6.)*

TRIAL NO. 3.

GOVERNMENT AND SOOBID PURAMANICK

versus

CHUNDER SIKOR SIRCAR (No. 12.) MADHUBCHUNDER MOZUMDAR (No. 13,) SOOJYE MUNDLE (No. 17,) GAZEE TAKAJGEER (No. 18,) PROTAP SIRCAR (No. 20,) NAZIR MUNDLE (No. 21,) GOBIND CHUNDER SIRCAR (No. 23,) MOMEEN CHOWKEEDAR (No. 24,) AND RAMKOMUL SIRCAR (No. 5.)

Rajshahye.

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The prisoners convicted of riot attended with murder connected with an attempt to

CRIME CHARGED.—*Trial No.* 1.—Riot attended with the murder of Haniff Pramanick and Bodi Pramanick and the wounding of six other persons

Trial No. 3.—Riot attended with the murder of Shukur Pramanick.

Committing Officer.—Mr. A. J. Jackson, officiating magistrate of Rajshahye.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 7th March, 1856.

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* Acquitted by the lower court.

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Remarks by the officiating sessions judge.—These two cases though technically separate, and separately tried, are in fact only parts of one transaction, they involve, with only a few exceptions, the same prisoners, and they must, in order to be fairly understood, be considered together.—My judgment in detail on each case is appended, and I will trouble the Court further with a very few general remarks common to both cases, and as it were introductory.

It is notorious, and in fact appears in evidence, that the prisoners are nearly all, if not quite all, in the service of Messrs. J. and R. Watson, that ill-feeling has existed for some time in the neighbourhood of Hatdoil between the riots and managers of the concerns which now belong to these gentlemen in that quarter, and that firm has retained the services of Mr. Montriou, on behalf of their dependents.—This fact we have from the learned gentleman himself.

The cases are abundantly complicated and of very considerable importance, they occupied nearly three weeks in the trial, and in the first case resulted in some difference of opinion between myself and the law officer; in the second, partly to give the prisoners a fair trial, and partly for my own assistance, I invited the aid of the principal sudder ameen, and the sudder ameen as assessors,—both of them having a good knowledge of English, and being officers of established reputation and experience. In this case their recorded opinions and mine entirely concurred. The verdict in particular of Rai Punchanun Banerjee, principal sudder ameen, is a remarkably clear and well written paper, he has recorded it in his own language, and very wisely; the sudder ameen with less discretion has given his finding in English and consequently expressed himself with far less force and clearness. He afterwards declared his readiness to sign the principal sudder ameen's verdict, but I thought it better that his own opinion should be independently recorded.

Upon the trial, some important innovations in accordance with recent enactments, and with what I understand to be the present feeling of the higher court, were introduced; and some points of importance were discussed upon motions and objections chiefly of Mr. Montriou, and if anywhere, the Court should consider that I have erred, I trust I may be set right.

For instance, I suggested to the Government pleader to use a discretion in declining to call superfluous witnesses, and many consequently were not called for the prosecution, though an option was given to the counsel for the defence of cross-examining such witnesses, in accordance with the usage of the Queen's Courts, the same course was taken with regard to many witnesses for the defence.

Again, the counsel for the prisoners was allowed to avail himself of the privilege under Act II. of 1855 of examining wit-

get land for the cultivation of Indigo were variously sentenced, some to transportation others to different terms of imprisonment, according to their respective degrees of guilt.

Reg. IX. of 1796, points out how prisoners are to call their witnesses.

Sec. 25, Act II. of 1855, allows the Court to call upon any person present to give evidence, but does not accord that privilege to parties.

Daroghas' abstracts of statements prepared according to Circular Orders cited, inadmissible as evidence.

The deposition of a deceased witness duly proved is admissible as evidence.

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nesses not named in the calendar, but who appeared in court.— This appears to me a somewhat dangerous indulgence, but the application could not be resisted. The Court will also observe the discussions regarding the reception of evidence to which I have adverted elsewhere.

It will be obvious to the Court, as it was to me, that gross mismanagement in the police investigation of these cases, has very largely enhanced the difficulty of their trial and endangered the success of justice.

It seems strange, very strange, that an outrage of this aggravated kind should have been planned, prepared and carried out, within six miles of a thannah, and a deputy magistrate's cutcherry; that after its occurrence, the darogah should not have reached the spot for twenty-four hours, nor the deputy magistrate for *days;* that the enquiry should have lingered, and the arrest of the prisoners delayed until a series of elaborate *alibis* had been prepared and the police proceedings tainted with suspicion and stamped with contempt.

The prosecution in these cases, was conducted by the Government pleader, assisted at my suggestion by Baboo Omakant Bhaya, another pleader of this court, who has a fair knowledge of English, and holds a diploma.—Both vakeels acquitted themselves fairly though at great disadvantage, being little acquainted with criminal procedure, and wholly unprepared for the instances of departure from established usage which I have just mentioned.—The magistrate would have used, I think, a sound discretion if he had procured the assistance in this difficult and important case, of counsel more used to contend with advocates of Mr. Montriou's metal.

The remarks submitted in the latter (or Kakphoo) case are at much less length than in the former case, this is partly from the case being less intricate and partly from the circumstance of the prisioners relying upon the same *alibis* adduced already in the Hatdoil case. I do not think it is my province to urge upon the Court the reasons for which I disbelieved these *alibis,* they should be equally patent to the Court as they have been to me.

As regards the proceedings of the police, I propose to address the commissioner as soon as I am favored with the Court's sentiments on the subject.

Remarks on the Hatdoil case.—The prisoners are charged with having on the 25th of Assar last, corresponding with the 8th day ot July in the year 1855, committed a riot in the village of Hatdoil, wherein one Hanif Paramanick, and also one Bodhi Sircar were murdered, and one Sirleo Paramanick and several others were wounded.

The date above specified, as found in the calendar of commitment, appears to have been erroneously laid and there is little

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doubt that the offence was actually committed on Monday the 26th of Assar or 9th of last July.

The village of Hatdoil is in pergunnah Lushkurpore.—It lies about six miles south of Nattore where a deputy magistrate is stationed, and it is of course within the jurisdiction of that officer.

This village, as well as many of those surrounding it, is within the limits of the Bansbaria Indigo concern, and is included in a farm or *ijara* held by Messrs. J. and R. Watson to whom that concern at present belongs.

The majority of the persons accused are in the employ of the firm just named, who have undisguisedly retained the services of an English barrister for their defence.

The case, from its importance, from the number of parties involved, from defective and dilatory investigation, has presented many difficulties, and the duration of the trial has been prolonged accordingly.

The first enquiry into the matter was made by the darogah of Nattore, and it has since passed through the hands of three magisterial officers, and a period of seven months has elapsed between the commission of the offence and the trial of the perpetrators.

It appears that upon the date above mentioned, about or a little before sunrise, a body of men variously estimated at from 100 to 200, armed with spears and javelins, and some of them with shields, *lattees*, swords and other offensive weapons, entered the village of Hatdoil, and almost before the inhabitants were out of their beds, commenced a general attack, marking as their principal objects, the dwelling houses of the leading inhabitants. It further appears that the armed body consisted partly of up-country men, partly of natives of the vicinity, and was accompanied and directed by three men on horseback.

These facts clearly show that the outrage had been premeditated, and arranged; they point to resources and organization far beyond those attributable to the parties actually arraigned, and they involve a legal malice, and a contempt for constituted authority, altogether extraordinary.

This contempt has been almost justified by the sequel. Slow and feeble have been the steps taken by the local police, and I expressly declare that any failure of justice in this case will have mainly to be ascribed to such mischievous vacillation. The rioters entered Hatdoil at its northern extremity, coming rather from the westward, and immediately surrounded and attacked the houses of Chotee Mundul and Sonye Paramanick which are the first, as one enters the village; in this quarter they met with no opposition, and after plundering the houses there, passed on to the centre of the village, in which are situated the dwellings of Cholim Paramanick and Modhoo, who are universally stated to be the leading inhabitants of Hatdoil. The families of these

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two persons, some six or eight persons, after causing the retreat of their women and children, took their stand with their *lattees* in front of their houses, in the hope, it would seem, of checking the advance of the rioters. In this object, for a moment, they succeeded, but only, it would seem, in order to bring an overwhelming force upon them. They did not strike a blow, they were not supported by the other villagers, their numbers were too small for effectual resistance, which indeed, had been made impossible by the surprize and the rioters knew their advantage.

Orders were given for the onset, that is to say, the prisoner Ramkomul Sircar No. 5, we are told, being on a large bay horse in the rear of the mass of rioters, called out "*looto*" or *loot kuro*, but Seetul Sircar No. 14, who was on foot, and in advance, distinctly ordered *soolphis* or "*surkees*" to be used, of which the first was thrown by his son Subdal Sircar No. 15, and struck Hanif Paramanick, the brother of Cholim Paramanick, in the abdomen, and came out at his right flank, inflicting a mortal injury. Upon this, the group above mentioned, lost all courage and took to flight, most of them in a northerly direction, the wounded man exclaiming, "Brother, I am a dead man" ("*bhai morilam*") plucked the javelin from his wound, and afterwards made his escape to Satsoil, which is a village immediately south of the scene of this outrage. Their flight was immediately followed up by the plunder of their houses, and about this time, it seems, another of the assailants, named Somus No. 16, also under the direction of Seetul, wounded with a similar weapon the witness Sirlee Paramanick No. 1, who was merely looking on at a little distance and Sooja Paramanick, was also wounded under like circumstances. This wound was in the right leg above the heel, and was severe, though not dangerous.

After this, the rioters proceeded further southward, towards the house of Motee Sircar, another person of consideration in the village. This person attempted to stay the assailants by declaring himself of their party and forbidding his fugitive neighbours to take refuge in his house. This, however, availed him nothing, he was wounded first in the temple, afterwards in the hinder parts with "*surkees*" or spears, and was subjected to other violence. Several of those residing like him in the south Parah were at the same time attacked, some almost in their beds and the rest before they had time to escape and four of them were variously wounded, namely, Kulsun, Alum, Bodi, Aradhun, of whom one, namely Bodi, was hit mortally.

After pillaging and destroying every thing not only in the houses above mentioned, but it would seem throughout the village without distinction, the rioters proceeded to Kamarpara, or Kamar Hatdoil which lies to the westward and is in fact a part of Hatdoil, there they committed further depredations and then,

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as it is stated, they went on Kakpore, or Kakphoo, where they committed acts which are the subject of a separate investigation.

Of the three persons said to have been on horseback, two, and those the principal, are before this court, namely, Chundersikor Sircar, prisoner No. 12, who is dewan of the Peergunge Indigo factory and Ramkomul Sircar No. 5, of the supplemental calendar, who is the chief dewan of the Bansbaria, and outlying factories, these two persons who are described as having kept in rear of the mob, urging them on to the fray, and pressing forward any who turned or hesitated, have been distinctly identified by the two most important witnesses and greatest sufferers in the affair, Cholim Paramanick and Modhoo Mundle, they are faintly indicated by some others, who do not, however, name or actually point them out, and they are also positively sworn to by a witness Kheyal Mundle, who, although he has certainly weakened his credit by some unaccountable replies in cross-examination, is yet a witness of some importance, and appears to have given credible testimony upon the points actually at issue.

The third person named as having been present on horseback, has not been apprehended.

The person after these, most conspicuous in the affair, is the prisoner No. 14, Seetul Sircar, who is the tahsildar of Hatdoil, and I believe of other villages, he is clearly identified by no less than fifteen eye-witnesses, nearly all of whom are quite worthy of credit, and who, with more or less precision, have described him as being in advance of the rioters with a spear in his hand, and, although he struck no blow himself, as having given the orders on which Hanif and others were wounded. The personal appearance of this man, and the position he occupies in the village, make it impossible that those who identify him, should be mistaken, although it is likely enough that others might not have remarked him, either from being at a distance, or from having their attention fixed on other objects.

Next to this man, comes his son Subdal Sircar No. 15, who, it is stated, was alongside his father, and at his command, inflicted upon Hanif the wound previously described. Thirteen witnesses identify this prisoner without any appearance or probability of doubt.

Somus Paramanick No. 16, who also, it is said, was close to Seetul, and at his order, wounded the witness Sirlee No. 1, was clearly recognized by eleven of the witnesses, all of whom pointed him out in this court without hesitation.

Next in order of identification and proof come Soojye Mundul No. 17, who Cholim says, wounded Motee Sircar, although Motee himself fails to identify him, or indeed any of the prisoners (a circumstance which viewed in connexion with his conduct in the affray is not without its significancy) and Nazir his brother No. 21, each of whom are named and pointed out by eight

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witnesses, the same witnesses in either case. It is noticeable that two of the witnesses pointed out Nazir as Soojye and vice versâ, they accounted for this mistake by the fact that the two are brothers, and that at the time of the occurrence they wore moustaches which they have since shaved off.

Gour Soonder Chowdry is identified, as writer in the Peergunge factory, and engaged in the attack, and is sworn to by four witnesses, the three who depose to the dewan, and one other No. 21, Moondeer Paramanick who identifies no one else, and speaks very positively regarding this prisoner.

Lastly, Gazee the Takajgeer is identified by the same three witnesses who name the dewans, and is specified by Cholim Paramanick as the man who wounded Bodi. The medical evidence clearly proves that both Hanif and Bodi died of the injuries which they received in the affray.

As regards the other prisoners, six in number, against whom evidence has been preferred, varying in amount and credibility discrepancies have occurred, and doubts have been suggested of which they are entitled to the benefit, and I therefore acquit Madhub Mozumdar (No. 13.)

Bhajun Sircar No. 19.

Protap Sircar No. 20.

Gobind Chunder Sircar No. 23.

Mooneen Chowkedar No. 24, and Arujoollah No. 6, of the supplemental calendar.

I may observe that of these six, there is but one in respect of whom the result has been affected in my mind by his affirmative defence and that is, Madhubchunder Mozumdar, No. 13. He is *serishtadar* of the Peergunge Factory and is identified by same three witnesses who identify the dewans, but with less precision and certainty, I had therefore, conceived the probability of a mistake in reference to him, and he moreover, alleged, as do the whole fifteen, a plea of *alibi*, his being the only such defence that is not in my judgment either highly suspicious or positively worthless.

As to the other five named, I have acquitted them partly on the ground of discrepancies in the testimony before this court, and partly, because they were not named by the same witnesses in the earlier stage of the enquiry.

It follows then, that I convict Ramcomul Sircar No. 5, Chand Sircar No. 12, Seetul Sircar No. 14, Subdal Sircar No. 15, Somus Paramanick No. 16, Soojya Mundle No. 17, as ringleaders in the offence and deserving a greater degree of punishment; also Gazee Takajgeer No. 18, Nazir Mundle No. 21, Gour Soonder Chowdry No. 22, as principals but in a subordinate degree.

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It is necessary now to settle the precise charge of which the prisoners are, in my view of the case, convicted.

The main offence, and as it were the vehicle for the other specific acts charged, is *riot*.

It was a tumultuous* disturbance of the peace by more than three persons assembled together of their own authority, with an intent mutually to assist one another against any who should oppose them in the execution of their private enterprize, and having actually executed the same in a violent and turbulent manner, to the terror of the people, the act intended and executed being moreover in the last degree unlawful.

* Vide Russell, Vol. I. 266.

And the incidents proved, were surely murder and wounding, and also plunder. The law officer, however, upon the question put to him in court, has declared that not *Kutl-i-amd*, but *Kutl-shibeh-amd*, has been substantiated, the latter offence being usually rendered by the term culpable homicide, as far as I understand the Mahomedan law, the broad distinction between the two offences just mentioned, *Kutl-i-amd*, and *Shibeh-amd*, lies in the existence of an *intention to kill* or otherwise, and as this intention rarely admits of direct proof, it is usually inferred from the nature of the weapon employed.

Now, although the fatal weapons were not brought into court and identified, it was clearly proved that both the deceased persons had been wounded with weapons coming under either of the two descriptions "Surki," and "Soorki" or "Soolphi" which are represented as being so nearly alike as to be constantly named one for the other, partly from the difficulty of distinguishing them at a little distance, and partly from the deponent not being acquainted with the exact name of the weapon which he described" either is a weapon made of a bamboo varying from five to six or eight feet in length, surmounted by an iron point, which is sometimes flat, and sometimes round or square, the latter kind being as I am told usually called "Soorki" or "Soolphi" the former Surki. If either of these weapons be not calculated, and (used as they were on this occasion) designed to cause death, I am at a loss to conceive any which could be so described. They were flung from a distance of eight or ten cubits more or less and in each case struck on the abdomen.

In English law, I presume the point would not have admitted of discussion. Russell says, "Where the intent is to do some great bodily harm to another, and death arises, it is murder, &c." and again "If a wrongful act (an act which the party who commits it can neither justify nor excuse) be done under circumstances, which show an intent to kill, or do any serious injury, or any general malice, the offence is murder."

The prisoners therefore on the 9th day of July last, made a

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riot wherein Hanif and Bodi, were murdered, and Sirlee Paramanick and others were unlawfully wounded.

It occurs to me that I should not dismiss without some special notice, the pleas of *alibi* advanced on behalf of the prisoners, Chunder Sikor, No. 12, and Ramkomul Sircar, No. 5, both of which defences have a quasi official support, and both of which I have set aside as untrustworthy.

The first is that of Chunder Sikor Sircar, who brings the darogah and mohurrir of thannah Jellinghi in the Moorshedabad district to prove, that on the 26th Assar at one *prohur* he appeared in person at that thannah to give an information regarding a petty theft which had occurred at his house, regarding which he had *no claim to make* nor *did* he wish *for inquiry*. This circumstance is of course noted in the thannah diary or "Roznamcha" on referring to which, I find the entry of an "Izahar" having been made regarding the theft in question, but it is not stated who made such "Izahar," nor does the entry state the *hour* at which such information was given and it occurs among the last, I think the last entry but one for that day. The darogah, who is an old up-country man, exceedingly deaf, unable to read or write Bengali, occupied the court a full quarter of an hour in attempts to make him take the solemn affirmation under Act V. of 1840, which he pretended not to understand, and declined to account for any entries in his Roznamcha, in regard to which he was actually ignorant of the practice, referring for all such particulars to his mohurrir.

The mohurrir also deposed to the giving of the information by Chunder Sikor, but had no acquaintance previous to the information, by which he might recall his identity. The testimony of the third witness, an inhabitant of Jellinghi, who swears to having seen the prisoner in the end of Assar, specifying the 26th is in itself suspicious, as the fact of his appearing at the thannah is violently improbable, nor do I place more trust in that of the remaining witness, Habloo Sheikh, who deposes that he was sent to prisoner with a note eight or nine days before the end of Assar, to summon him home on account of the illness of his mother, and it must be remembered that in the month of July, when almost all travelling takes place by water, it would not be impossible for a man to be concerned in a riot at Hatdoil, at sunrise, and to be at Jellinghi, the same afternoon.

Again as to Ramkomul Sircar, the *alibi* set up, is, that on the very day of the riot, he was at Moorshedabad, with his brother, registering a deed executed in their favor jointly. The acting registry mohurrir, Greeschunder Bose, is called to prove this circumstance, and he swears to the presence of Ramkomul, who, together with his brother, Ramkishor, appeared, as he states, on the 9th, to deposit the deed, which was, however, registered on

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the 12th, three days afterwards, on which day the prisoner did not appear and was not seen by this mohurrir after the 9th. Now in corroboration of this testimony an extract copy from the Register's book is produced, which bears on the face of it the usual allegation by the register of deeds, to its having been registered by him on the 12th, and there is also a short note in English, purporting to be signed by the register, reciting that the deed was brought for registry on the 9th. The original deed itself, however, which has been procured and put in by the prosecution, contains no such note, and it is said that the original of the note is in the register's books, and not on the original deed. Under these suspicious circumstances, I can only say that I disbelieve the statement of the mohurrir, and that nothing short of a deposition by the register of deeds himself would satisfy me, that the prisoner was in his office on the 9th July, and such deposition is unfortunately impossible, inasmuch as it is distinctly stated, that the parties depositing the deed for registry, do not see the register at all, being taken into his presence only when the registry is to be completed.

The prosecution was conducted in this case by the Government pleader, assisted after the first day of the trial by another of the pleaders of the judge's court, who understands English, and has passed a Moonsiff's examination. Although the native vakeels acquitted themselves very fairly, yet they are at a manifest disadvantage, when opposed to a barrister of the Supreme Court versed in criminal cases, apt in raising and meeting objections, possessing a knowledge of the principles of law and details of practice, a hundredfold beyond any they have had opportunities of acquiring, and I think it unfortunate that considering it has been long notorious that Mr. Montriou was retained for the defence, measures were not taken to provide a similarly qualified counsel for the prosecution.

Mr. Montriou, I am bound to say, has used his advantage with moderation and fairness. He has well supported the character of an English Advocate, and has, on various occasions, rendered the court material assistance.

He subjected the witnesses for the prosecution to a skilful and searching cross-examination, and I must confess my surprise at the trifling extent to which he was enabled to shake their testimony, when I consider the number of persons examined, the complexity of the case, the length of time over which the depositions extended, and the fact some of the witnesses had made statements on oath before three separate officers and most of them before two, previously to their appearance in this court. Two only of the principal witnesses were seriously discredited. One of them, Sooja, No. 6, having apparently committed perjury and another, Kheyal Mundle, No. 26, having given very unsatisfactory and prevaricating answers on cross-examination.

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Several points were argued in the course of the trial, but there were only two of importance that I can recollect in which I overruled the counsel for the prisoners, which points I had better notice here.

One was this, in cross-examining certain of the witnesses for the prosecution, Mr. Montriou with the view of establishing contradictions between the witnesses' statements here, and what they had said elsewhere, sought to put in as evidence, the *abstract* statements made by these witnesses to the darogah, not on oath, nor recorded separately, but incorporated in his reports of different dates. These I refused to admit as independent depositions, or even records of depositions, but I allowed him to call the darogah to prove such statements refreshing his memory by reference to such papers as memoranda taken at the time or soon afterwards.

The second point was the admission under protest from the learned counsel of the deposition of Hanif taken upon oath by the darogah shortly before Hanif's death. The examination of the darogah failing to show that at the time of making it, the deceased was under the apprehension of approaching death even under the comprehensive words of Act II. of 1855. It was then tendered by the Government pleader as the deposition of a deceased witness, who could not personally appear in court by reason of his decease. To this, Mr. Montriou made the objection which he conceived fatal, that the deposition had been taken in the absence of the accused, or at least, it appeared so, and was therefore good for nothing. But I must observe that the reception of depositions taken in the absence of the prisoner, is not by any means unknown to English law; Vide Taylor Vol. II. page 1018, on the subject of depositions returned by a coroner, which, it is alleged, are admissible as secondary evidence though so taken. Vide also Philips on evidence, Volume II. page 74. The doctrine, it is true, is disputed, and probably would not now be upheld upon argument; but the fact shows that there have been circumstances under which even English Courts have admitted such depositions, and although there is a wide difference between the Coroner's office, and that of an Indian darogah, yet there is also a wide difference at present between the systems.

Mr. Montriou appeared to recognize nothing intermediate between unconditional acceptance, giving the evidence its entire weight, and absolute rejection. It did not appear to me that this close and stringent rule applied to the practice of our courts, nor could Mr. Montriou point to an instance where such testimony had been rejected by the Court of Nizamut Adawlut, in consideration therefore of the existing precedents which require that the depositions of deceased witnesses, shall be filed on the record, I ruled that the deposition should be ad-

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mitted quantam valeat making the necessary deduction for the absence of cross-examination by the prisoners.

If I have been wrong in this ruling, I trust I may be set right by the Court, and in that case, I think the subject should be made the subject of a Circular Order, as there is much looseness in our inferior criminal courts concerning the taking of depositions otherwise than in the hearing of persons charged with offences.

A recital of the evidence of each separate witness would have spun out to an enormous length the remarks on this case, which have already been, I fear, unduly prolonged, and I therefore refer for information on this head to the tabular statement appended to this paper.

Law officer convicts

Seetul as giving instructions } *Deyut.*
Subdat wounding Hanif, *Shibeh amd* }
Somus wounding Sirlee—*Akoobut.*

Soojye,
Gazee,
Bhajun,
Protap,
Nazir,
Momeen, } As rioters punishable by *tazeer*.

Chunder Sircar,
Madhub Mozumdar,
Gobindchunder Sircar,
Goursoonder Chowdry,
Ramkomul Sircar,
Arujoollah, } Acquitted.

The *futwa* of the law officer differs in several particulars from my judgment and as, moreover, the crime, established against the prisoners whom we both convict, requires a measure of punishment far beyond that which this court is competent to inflict under Regulation II. of 1823, I am obliged to refer the whole proceedings for the consideration and orders of the Court of Nizamut Adawlut.

Remarks in the Kakphoo case.—The assessors come into court and give in their respective verdicts. That of Rai Punchanun Banerjee Bahadur being in Bengali, and that of Rai Gungachurn Shome being in English, with an abstract of his opinion in Bengali attached thereto.

The verdict of Rai Punchanun Banerjee convicts all the prisoners now at the bar, except Protap, ascribing different degrees of culpability.

That of Rai Gungachurn Shome similarly convicts all the prisoners now at the bar without any exception.

Since receiving the verdicts of the assessors, which I have attentively considered, I have again read over the evidence for the

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prosecution, and after giving all due weight to the objections raised, and the discrepancies remarked upon by the learned counsel for the defence, having also thought most carefully over the various defences urged on behalf of the prisoners, I find it impossible to resist the feeling amounting to certainty, that the prisoners, now present, with the exception of Protap, did come with an armed assemblage, and in a riotous manner, into the lands of Kakphoo, that on a remonstrance from the deceased Shookur Paramanick, Madhub Mozumdar and the two dewans Ramkomul and Chunder Sekor, did use such expressions, and gave such orders, as led to the assault upon the unhappy man, first ˙y Momeen singly, and afterwards promiscuously by the other rioters, whereby the said Shookur was mortally wounded and in fact murdered.

The evidence for the prosecution appears, to me, as to the greater part of it. quite free from suspicion, the witnesses being laboring persons, whose presence in the scene is perfectly natural and probable. Their testimony is, in all material respects, cons..tent, and has not been in any way substantially discredited.

The *alibis* of the three leading prisoners. Chunder Sekor, Ramkomul and Madhab Mozumdar have, I think, been well disposed of by the senior assessor, Rai Punchanun Banerjee Bahadur, in which opinion his colleague also concurs, and I am sorry to find it my duty, in concurrence with the two assessors, to declare my belief that these *alibis* supported, as they are, by a show of quasi official support, are r tissue of falsehoods, and involve the deepest criminality on the part of those by whom they have been attested.

It is quite unnecessary here to go into a discussion of probabilities, the facts are in evidence, and are as melancholy as they appear to be irrefragable.

I must record my acknowledgments to the able assessors, who have sat upon this trial, for the very valuable assistance which they have given to the court, of which, for the time being, they have been members.

Their familiarity with native character and the usages of mofussil has well fitted them to appreciate the nature of the facts deposed to by the witnesses, while their judicial experience has enabled them to discriminate between trustworthy evidence and that which is otherwise.

I therefore convict the prisoners, Chunder Sekor Sircar, Madhubchunder Mozumdar, Soojye Mundul, Gazee Takajgeer, Nazeer Mundul, Momeen Chowkeedar and Ramkomul Sircar, of riot attended with the murder of Shookur Paramanick as charged in the indictment.

I acquit Protap Sircar, but as he is convicted in a previous trial by the law officer, in regard to him as to the other prisoners

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a reference to the Court of Nizamut Adawlut will be necessary, of which they must await the result.

As to the defence of the prisoners, it is to be observed that the learned counsel, who appears for them, has informed the court that he is responsible only for that part of it which affects the evidence for the prosecution, and that he was not a party to the preparation of their affirmative defences, although he believes them to be true. I think this is to be regretted, and I regret that in all respects the prisoners should not have relied upon him for their protection.

P. S. It will be remarked that the *alibi* set up by the prisoner, Madhub Mozumdar, to which, in connexion with the deficient evidence for the prosecution, some credit was given in the first case, has in this case, been disbelieved and set aside.

Tabular statement of witnesses.

Witnesses No. 1, Sirjee identifies Nos. 14, 15, 16, 17 and 21 (6*.)

Before deputy magistrate, Nos. 14, 15. 16, 17, 21 and 6.

Before magistrate, Nos. 14, 15, 16, 17 and 21.

Before darogah 10th July, Nos. 14, 15, 16. 17, 21 and 6.

No. 2, Motee Sircar identifies no one.

No. 3, No. 4, No. 5, ditto.

No. 7, Modhoo Mundul, Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 5.

Before deputy magistrate Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 5,

Before darogah, Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 5.

No. 8, Ch lim Paramanick, Nos. 12,* 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24,* 5 and 6.

Before deputy magistrate Peergunge* dewan, Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 5.

Before darogah, Nos. 12,* 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 5.*

No. 9, Nidan, Nos. 14, 15, 17 and 21.

Before deputy magistrate, Nos. 14, 15, 17 and 21.

Before darogah, not on oath, Nos. 14, 15, 17 and 21.

No. 10, Bhoirub, Nos. 14, 15, 17, 20 and 21.

Before deputy magistrate, Nos. 14, 15, 16, 17, 20 and 21.

Before darogah, not on oath, Nos. 14, 15, 16, 17 and 20.

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* Says—Do not recollect whom else I recognized.

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No. 11, Soobid Paramanick,* Nos. 14 and 15.
Before deputy magistrate, Nos. 14, 15, 16, 17 and 20.
Before darogah, not on oath, Nos. 14, 15, 16, 17 and 20.

No. 12, Shonye Paramanick, Nos. 14 and 15.
Before deputy magistrate, Nos. 14 and 15.
Before darogah, on oath. Identified no one himself, but was told by Hanif, that prisoner No. 15, had wounded him by order of No. 14.

No. 13, Somus Sirdar, Nos. 14, 15, 16 and 20.
Before deputy magistrate, Nos. 14, 15, 16 and 20.
Before darogah, on 13th July, Nos. 14, 15 and 16.

No. 14, Zomeer Gyen, Nos. 16, 17 and 21.
Before deputy magistrate, Nos. 16, 17 and 21.
Before darogah, on oath, 13th July, Nos. 16, 17 and 21.

No. 15, Kulum Paramanick, Nos. 14 and 16.
Before deputy magistrate, Nos. 14 and 16.
Before darogah, not on oath, recognized no one, meaning doubtful.

No. 16. Bidu Sirdar, Nos. 14, 15, 16, 19 and 20.
Before deputy magistrate on cross-examination, Nos. 14, 15, 16, 19 and 20.
Before darogah, not on oath, Nos. 14, 15, 16 and 20.

No. 17, Chootee Mundle, Nos. 14, 15 and 20.
Before deputy magistrate, Nos. 14, 15 and 20.
Before darogah, on oath, Nos. 14, 15 and 20.

No. 18, Hareah Paramanick, No. 23.
Before deputy magistrate, No 23.
Before darogah not found.

No. 19, Sowra Paramanick, No. 23.
Before Deputy Magistrate, No. 23.
Before darogah not found.

No. 20, Kanye Mundle, No. 23
Before deputy magistrate, 2nd August, No. 23.
Before darogah not found.

No 22, Ameer Paramanick, Nos. 14, 15, 19 and 20.
Before Deputy magistrate, no one.
Before darogah, on oath, Nos. 14, 15, 19 and 20.

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No. 23, Kangalee Paramanick, no one.

No. 24, Arman Paramanick, (dead.)

No. 25, Woorap Paramanick, Nos. 14, 16 and 19.
Before deputy magistrate, Nos. 14, 16 and 19.
Before darogah without oath, Nos. 14, 16 and 19.

No. 26, Kheyall Mundle, Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 5 and 6.
Before deputy magistrate, 11th September, Nos. 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 5 and 6.
Before darogah, Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 5.

No. 27, Sobi or Chobee, Nos. 16, 17 and 21.
Before deputy magistrate, Nos. 16, 17 and 21.
Before darogah, Nos. 16, 17 and 21.

On perusal of the above report the following resolution was passed by the Nizamut Adawlut (Present: Messrs. H. T. Raikes and J. H. Patton.) No. 393, dated 12th May, 1856.

The Court observe that the officiating sessions judge differs from the *futwa* of the law officer, as to the crime established against the prisoners in one case, and agrees with the assessors in the other, and also expresses his opinion that the measure of punishment he is competent to inflict would be inadequate. The crime established in the opinion of the officiating sessions judge is one involving a capital sentence and renders a reference of the case to this Court, under any circumstances, necessary. In all such cases, the officiating sessions judge is required, by Circular Order No. 22, dated 5th April, 1839, to specify the punishment which would be, in his opinion, adequate to the crime established against the prisoners convicted by him. As the officiating sessions judge has omitted to conform to this rule, the Court direct that he be called upon to supply the omission with as little delay as possible.

In reply to the above resolution, the following letter was submitted by the officiating sessions judge of Rajshahye No. 27, dated 19th May, 1856.

I regret the inadvertence brought to my notice in the Court's resolution No. 393, under date the 12th May, 1856 in connection with the trials noted in the margin.* The rule contained in the Circular Order therein referred was not unknown to me, but the cases in question being of some difficulty,

* Trial No. 1, Chunder Sikor Sircar and others.
,, ,, 3, Chunder Sikor Sircar aforesaid and others.

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and requiring great care in the analysis, in the mass of details, a specification of the proposed punishment was overlooked.

A large proportion of the prisoners are convicted by me in both cases, but as the main offence out of which the others sprung was *one*, under all circumstances, it will perhaps be convenient to deal with the cases as a whole, and I have set down below, the sentences of imprisonment with labor and irons, which, in my opinion, would be adequate with regard to the charges established, those convicted in both cases being distinguished by the figure 2 before their names.

2-Ramkomul Sircar, No. 5, Calendar No. 2.
2-Chunder Sikor Sircar, No. 12. } *Fourteen years.*

These prisoners* struck no blow but were the persons of most importance, and from their influence and position were the most mischievous in the affair.

Madhub Chunder Mozumdar, No. 13, *fourteen years.*

This prisoner was not convicted in the first case, but took a very leading part in the atrocious outrage ending in the death of Shookur Paramanick.

No. 14, Seetul Sircar.
,, 15, Subdal Sircar.
,, 16, Shomus Paramanick.

Each *ten years*, not committed in the 2nd case, but proved to have taken a very active part in the first or Hatdoil case.

2-Soojye Mundul, No. 17.

Also to *ten years* convicted in both cases and a ringleader in the first.

2-Gazee Takazgeer, No. 18.
2-Nazir Mundle, No. 21.
2-Gour Soonder Chowdry, No. 22.

Each *seven years*. In both cases, but less active than the others.

Momeen Chowkedar, No. 24, *fourteen years.*

This man is convicted in the second case only, but was prominently active and undoubtedly struck the first blow at the deceased, Shookur Paramanick.

These sentences are, as low as I can venture to propose after examination of the precedents and considering the peculiar atrocity of the crimes. I have not recommended a capital sentence, because I certainly think that death was not in any case contemplated, although it is indeed difficult to plead any extenuation for the brutal outrage upon Shookur Paramanick, who was killed, it may be said, in his own field simply for protesting against injury to his crops.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) These cases occurred early on the morning of the 9th July, 1855. Although they were not the result of one and the same intention, inasmuch as it is not apparent that there was any purpose originally of doing more than plunder Hatdoil, and Shookur's death is to be ascribed to

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the accident of his having fallen in with, and opposed, the party in crossing his field after leaving Hatdoil, yet as many of the accused are the same in each, and the one act followed immediately upon the other, it will be most convenient to consider them both together.

Information was carried to the thannah of Nattore early on that day by Surroop Chowkedar of Hatdoil, who reported the outrage and wounding of Haneef, Buddee, and others, as having been committed by the people belonging to the factories of Bansbaria and Peergunge, under the management of Mr. Jaffrays. The darogah was about to proceed to the spot, when Buddee Sircar, one of the wounded men, was brought to the thannah. His deposition was at once taken and he was sent off to hospital, but he was in the first place conducted to the deputy magistrate, who also took his deposition and then forwarded him to the hospital.

Again on the same day before the darogah could set out, Mudhoo chowkeedar of Khakphor reached the thannah and reported the wounding of Shookoor Paramanick. The darogah then started by water. He reached Khakphor the next day, the 10th, and took the deposition of the man wounded there, viz. Shookoor Paramanick. He then went on to Hatdoil, where on the same day he took the deposition of Hanif Paramanick and the others, reported by Surroop chowkeedar to have been wounded. Shookoor died on the 10th, Hanif on the 11th, and Buddee on the 14th July, each of his wounds.

The following is the purport of their depositions.

Buddee stated both before the darogah and the deputy magistrate, that one or two hundred of the Peergunge and Bansbaria factory people, names unknown, armed with spears, &c. came to the village. He knew not by whom he was wounded, nor did he recognise any one except Abeer Sircar of Chundunpore, who was on horseback, (not on trial.) The quarrel was attributed to the ryots refusing to grow indigo for the factory.

Hanif deposed to the darogah on the 10th, that the day before, about two hundred people attacked his village. They were Mr. Jaffray's people; Seetul Sirkar, prisoner No. 14, ordered them to sack the village. His son Subdal, No. 15, threw the spear by which he was wounded. He recognised Abeer Sircar and prisoners Nos. 21, 17, 16 and 18, also the Dewans of Peergunge and Bansbaria factories, who were on horseback, also No. 6, was there on horseback. The dewans' names, he did not know, but if he saw them, he should recognise them.

Shookoor's deposition, which had been taken by the darogah on the 10th before he took that of Hanif, was that the day before, he was weeding his field, when about 150 armed people came from the direction of Hatdoil. He recognised prisoner No. 13, an amlah, and the dewan of Bansbaria factory all three

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on horseback; he begged them not to cross his field, when prisoner No. 13, called out, "*mar sala;*" upon which he was attacked, knocked down and severely wounded in several places with spears, &c., he could not say who struck him, but recognised besides those above alluded to, prisoners Nos. 18, 21 and 24, and Abeer Sircar. His son Soobid was with him, and ryots who are witnesses in the case, were in adjoining fields.

Of the witnesses examined by the darogah several of those who had been wounded, deposed that they had recognised no one, while others named the two dewans, viz. prisoners Nos. 5, and 12, and 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24. The dewans were said to have been on horseback, a third horseman was ' y some spoken of as Abeer Sircar, while others said, he was Aruzoollah, prisoner No. 6.

It may be stated here, that the fact of the outrage having occurred and of the deaths and wounds having really taken place, as charged, is admitted by the prisoners' counsel. He urges that the accused are not the guilty parties, and that they have been falsely charged. He refers in proof to the delay in naming them and would shew that they were only inculpated after sufficient time had elapsed to enable the prosecutors and witnesses to concoct their story. The report of the proceedings before the police has therefore been given. It is manifest from those proceedings that the events, which had taken place both at Hatdoil and Khakphor, were made known as soon as they could be, and those witnesses who had recognised parties named them forthwith, while others who had failed to make any of them out did not profess to know ..ames. There is nothing therefore to support the idea of a conspiracy to charge falsely those now on trial. Another suggestion has been made that the real offenders were *bidesees*, i. e. not inhabitants of that part of the country, and that this is evident from so few of a body said to have amounted to two hundred men having been recognised. It is not contended, however, that the party consisted exclusively of *bidesees*, but rather that it was made up of *desees*, i. e. natives of the destrict, and *bidesees*, and it is quite natural that prominent members of the gang of the former description known to the prosecutors and witnesses should have been recognised. The circumstance adds credibility to the evidence.

It remains to consider whether that evidence fully establishes the crime against the prisoners. For this purpose it will be necessary to examine the evidence recorded in each case separately.

In the first or Hatdoil case the officiating sessions judge and law officer have concurred in acquitting prisoners Nos. 6, 13 and 23. Nothing need therefore be said in this place of them. These officers differ as regards prisoners Nos. 5, 12, and 22, whom the officiating sessions judge has convicted, while the

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law officer would acquit them, giving credit to the evidence adduced in support of their *alibis*. On the other hand the law officer has convicted prisoners Nos. 19, 20 and 24, whom the officiating sessions judge has acquitted in consequence of discrepancies in the evidence against them.

It is impossible, in our opinion, to set aside the evidence for the prosecution, unless rebutted by that for the defence, in regard to prisoners Nos. 5 and 12, the factory dewans. The purport of the entire evidence is that there were three people on horseback, of whom prisoners Nos. 5 and 12, are distinctly said by witnesses Nos. 7, 8 and 26, to have been two. This is corroborated by the deposition of Hanif as given above, and by the evidence of witness No. 10, who deposed to two of the horsemen being of a superior class from the style of their dress, although he could not recognise them. The presence of prisoner No. 22, is distinctly indicated by the evidence of witnesses Nos. 7, 8, 21 and 26, that of prisoners Nos. 19 and 20, by witnesses Nos. 7, 16, 22 and 26, while others name either one or the other of them.

The officiating sessions judge and law officer concur in convicting prisoners Nos. 14, 15, 16, 17, 18 and 21. The prominent part taken by prisoners Nos. 14, 15 and 16, is clearly mentioned. Prisoner No. 14, is sworn to as having given the orders, in obedience to which prisoner No. 15, wounded Hanif mortally, and prisoner No. 16 wounded No. 1. The presence of prisoners Nos. 17 and 18 is deposed to by several witnesses and according to the evidence of witness No. 7, prisoner No. 17, struck witness No. 2, Motee, and prisoner No. 18 wounded Buddee who subsequently died. Prisoner No. 21, is also denounced by witnesses Nos. 1, 7, 8, 9, 10, 14, 26 and 27.

The evidence for the prosecution in the second case may now be considered. The officiating sessions judge tried it with the aid of assessors. The prisoners again put upon their trial were Nos. 5, 12, 13, 17, 18, 20, 21, 23 and 24. Prisoner No. 23 was discharged without calling upon him for his defence, and prisoner No. 20, has been acquitted by the officiating sessions judge. The evidence against the remaining prisoners has therefore only to be examined, and unless it be rebutted, it brings home the death of Shookoor Paramanick to them all, as more or less concerned in it. The deceased, it is shown, was quietly weeding his field in company with his son Soobid, when the party on their way home after the attack on Hatdoil, was asked by him not to cross it. Declaring who they were and that they were the factory servants of the Messrs. Watson they would not be stayed and on his further remonstrance, prisoners Nos. 5, 12 and 13, abused him and ordered him to be beaten, when prisoner No. 24, speared him, and when he fell, others, prisoners Nos. 17, 18 and 21, joined in the assault. This part of the story is strong-

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ly corroborated by the medical testimony, which describes the deceased as having received several punctured wounds, no one wound being in itself mortal, but to the effect of which altogether upon the system death was ascribed.

The result of the evidence for the prosecution having been above given, that for the defence has now to be taken into consideration. The defence refers equally to both cases and need not therefore be gone into separately as regards each. The plea of the prisoners is principally *alibis* and here it may be remarked that one* of the assessors has well and pertinently observed: "that it is in no way probable that all the servants of the factory, "implicated in the case, were absent from it on one and the "same day on futile reasons."

Prisoner No. 5, pleads that he was at Moorshedabad on the 9th July, effecting the registry of a mortgage deed. In concurrence with the officiating sessions judge, we do not credit the evidence that he was there on that day. The transaction appears from the deed itself not to have been a real one. The endorsement written and signed on the 12th, only records that the prisoner was there on the 9th, but no certificate on the 9th attests it, except one on the copy, while there is none corresponding on the original. Proof has been offered that the certificate of presence is the same on other copies of deeds, but the copies filed are all of alleged transactions subsequent to the 9th July, and the certificate is of such an unusual form, that it is open to the grave suspicion of having been prepared for the purposes of this case. Had the transaction been a bonâ fide one, the mortgagee would have been produced, his absence adds to the suspicion on the subject.

Prisoner No. 12 attempts to prove that he was at Jellinghy, and that early on the 9th he reported a theft on his premises at the thannah. The officiating sessions judge has well disposed of this plea. We concur with him that it is quite unlikely that a person of the prisoner's consequence, would have reported so trifling a theft himself. We observe that a Bengali note on the record, purporting to grant leave of absence to the prisoner, dated 6th July, 1855, has not been proved, and considering the short distance of Jellingly from the scene of outrage, it is quite possible that the information was lodged at the thannah after the occurrence so as to found the plea of *alibi*.

Prisoner No. 13 urges that he was in the house of a prostitute at a place several coss off; that he quarrelled with another visitor of her's and assaulted him, so that the police interfered; he was taken up and detained in custody for bail till midday of 9th. The police records are referred to in proof, but they have, in our opinion, been tampered with for the purpose of serving

* Gungachurn Shome, sudder ameen.

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the prisoner's plea. It is highly improbable that one rival lover would give evidence in favor of another, which, if the story be true, is now done; nor is it likely that a person of the prisoner's station could be at a loss for bail.

Prisoners Nos. 14 and 15 are father and son; the former says the latter was sick at Rampore and he was there in attendance on him, witnesses are brought to prove this, but although they depose accordingly, we cannot trust to their evidence; an argument has been urged here that prisoner No. 15, by profession a mohurrir and a candidate for employment as one, is not likely to have used a spear, so foreign to the habits of his class to handle, but the evidence for the prosecution is so distinct and straight-forward that we cannot allow their plea.

Prisoner No. 16 pleads enmity, but his witnesses attempt to prove *alibi*. They cannot therefore be attended to.

Prisoner No. 17, pleads enmity and *alibi*, but his witnesses do not give evidence in any way exculpatory of him, even if they be believed.

Prisoner No. 18 denies his guilt and pleads enmity. The other prisoners in like manner plead either *alibi*, enmity or conspiracy. Prisoner No. 22 supports his defence by saying he was a measuring ameen under Kashinath Acharj, whose *sunnud* he has produced, dated 13th Poos, 1261 or 27th December 1854, and a *hookumnamah* of 28th February, 1855 issued by the deputy magistrate of Nattore, but these prove nothing with reference to a transaction of July following.

The result of our examination of the evidence for the defence is, that it is untrustworthy in itself and fails to weaken in the slightest degree that for the prosecution. We have in the earlier part of these remarks disposed of an objection taken to the evidence on the ground of delay in reporting the case, but it is clearly shewn that no delay occurred. An objection has also been started that many of the witnesses had quarrels with certain of the accused. It is no doubt true that there had been complaints preferred against the factory people; the fact is proved by answers of the witnesses to questions put to them on the subject and also by copies of petitions filed. It is also represented that a complaint of the Shaleekohna, ryots of a similar attempted attack on their village had been dismissed; hence it is argued, that a general league has been formed to get the factory people into trouble. It is no doubt quite possible that those ryots seeing the factory servants involved in the present case, thought they could strengthen the case against them by their own complaint, but its dismissal does not invalidate the present charge, which, upon a review of the evidence, we consider is fully borne out against the prisoners. We can arrive at no other conclusion than that the attack on Hatdoil, was in furtherance of a scheme to get lands for Indigo culti-

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tion, or in revenge for not having obtained them for the purpose, while the murderous attack upon the unoffending man Shookur Paramanick, was as wanton and unprovoked as it is possible to conceive.

In the Hatdoil case, we are willing to adopt the views of the officiating sessions judge with reference to prisoners Nos. 19 and 20, whom he has acquitted on the ground of discrepancies in the evidence before him, and because they were not named in the earlier stage of the inquiry; but as regards prisoner No. 24, the proof is so ample from the record in the Khakphor case, that he was with the party, that it is impossible to disbelieve the evidence in the Hatdoil case, that he was present there; prisoners Nos. 19 and 20 will accordingly be discharged. In this case we convict the remaining prisoners Nos. 5, 12, 14, 15, 16, 17, 18, 21, 22 and 24, of riot attended with the murder of Hanif Paramanick, and Buddee Paramanick, in which Sirlee Paramanick and others were unlawfully wounded.

Again in the Khakphor case we convict the prisoners Nos. 5, 12, 13, 17, 18, 21 and 24, of riot attended with the murder of Shookur Paramanick. Thus prisoners Nos. 5, 12, 17, 18, 21 and 24, are convicted in both cases, while prisoners Nos. 14, 15, 16 and 22, are convicted only in the Hatdoil, and prisoner No. 13, only in the Khakphor one.

Considering the extreme violence and atrocity of the offence proved against the prisoners, we sentence prisoners, Nos. 5 and 12, as the ringleaders on the occasion, and who commanded the party, to imprisonment in transportation beyond seas for life. The same sentence is passed upon prisoner No. 13, who was so forward at the murder of Shookur Paramanick, and upon prisoners Nos. 14 and 15, for the part they took on the occasion of the death of Hanif.

Prisoner No. 16, who took an active part and wounded witness No. 1, in the Hatdoil case is sentenced to ten years' imprisonment with labor and irons in banishment; prisoners Nos. 17, 18, 21 and 24, were in both cases, and are sentenced to fourteen years' imprisonment with labor and irons in banishment; of these prisoner No. 17, wounded witness No. 2, in the Hatdoil, case; prisoner No. 18, is said by witness No. 7, to have dealt the fatal blow, which ultimately killed Buddee, but Buddee before death declared that he did not know who wounded him, prisoners Nos. 21 and 24 were in both cases and the last took a most conspicuous part in the attack on Shookur Paramanick in which Nos. 17, 18 and 21, joined.

Prisoner No. 22, is said in the officiating sessions judge's letter No. 27, dated 19th May, to have been in both cases. He was only, however, in the Hatdoil case, we sentence him to seven years' imprisonment in labor and irons in banishment.

The officiating sessions judge has asked the opinion of the

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Court on several points connected with the trial. As to the examination* by prisoner's counsel of witnesses named for the prosecution although not examined by it, the Court observe that Regulation IX. 1796, points out how prisoners are to call their witnesses. The officiating sessions judge could therefore have refused in his discretion the right of examination which he sanctioned.

* Para. 6.

As to the examination of witnesses (Para. 7) not entered in the calendar, but who were in the court, Section 25, Act II. 1855, allows the court to call upon any person present to give evidence, but does not accord that privilege to parties. The application of prisoner's counsel might therefore have been resisted.

Considering the abstract form in which darogahs now by Circular Orders No. 138, of 16th June, 1843, and No. 23, dated 7th April, 1849, record the statements of witnesses, the officiating sessions judge was right in not permitting the darogah's abstracts to be put in as evidence.

Hanif's evidence was properly admitted as the deposition of a deceased witness. The Court observe that the question of its admission was formally put to the law officer, who declared that it was legal evidence by Mahomedan law. This set the question at rest, and the ruling is in conformity with the principle of Circular Order No. 42,* dated 27th March, 1840, which admits medical testimony, if duly proved. A case in point is also to be found at page 335 of Select Nizamut Reports, Volume IV.

* See also Para. 6 of C. O. dated 16th July, 1838, No. 54.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

GOBURDHUN KAMAR (No. 3,) KHANWO MANJEE (No. 4,) RENYA MANJEE (No. 5,) KATOO MANJEE (No. 6,) DHUNEERAM KAMAR (No. 7,) KANGLOO MANJEE (No. 8,) AND LUPSA MANJEE (No. 9.)

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The commissioner appointed under Act XXXVIII 1855, may try cases committed for trial *after* 15th January, 1856, even although they were under investigation by the police and magistrate *before* that date.

The prisoners were acquitted, for want of proof of the murder, or that the remains found were those of the parties with whose murder they were charged.

CRIME CHARGED.—Nos. 3 and 4, riot attended with murder of Goburdhun Bowree, Pursa Bowree, and Mudhoo Bowree. Nos. 5 to 9, being accomplices to the abovementioned circumstance.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, officiating sessions judge of Beerbhoom, on the 28th March, 1856.

Remarks by the officiating sessions judge.—In September, 1855, the date not being exactly known, three men were murdered by being cut to pieces with axes and shot with arrows at a village called "Khongram."

The crime was discovered on the 18th December, by a man who went to the village to collect some small debts; on requesting his due from defendant, No. 3, the man, saying that he had already killed three of the Bowree caste would now kill him; he decamped and gave intelligence to the police, who came and found the remains of three bodies; No. 3, was apprehended, he confessed and named the other defendants; they also confessed and implicated each other: the story they tell is, that when the troops came into their village they ran off with their wives and children into the jungle, and on their return finding the deceased in the act of plundering their houses, then and there killed them. These confessions repeated before the magistrate with the exception of No. 7, are corroborated by evidence that three men were murdered; that the prisoners were seen with blood-stained weapons in their hands and by others, who, though they did not themselves see the crime committed or the actual proof of it, yet had heard the particulars from independent sources.

Witnesses Nos. 1, 11 and 14.

Witnesses Nos. 8, 9 and 10.

Before me the whole of the prisoners denied; Nos. 3 and 7 said, they were accused through enmity, the others could make no excuse and acknowledged their confessions or their having made them. The proofs therefore are, 1st, their own repeated

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confessions, 2nd, their implication by each other, 3rd, their having been seen with lethal weapons stained with blood, and 4th their having been heard to boast of the act; the only exception is No. 7, who did not confess before the magistrate.

The jury, with whom I tried this case, found the prisoners guilty, as charged by the magistrate; viz. Nos. 3 and 4, of riot attended with murder, and No. 5 to 9 with being accomplices in the same. I agree with the jury as to the facts of the case being proved; but under the circumstances above detailed, I do not think that the crime amounts to murder.

The confessions of the prisoners are the only direct proof that we have against them, and these contain the "legal justification" that it was in defence of their property that the deceased were killed by them; that this is true, I have no doubt, as the three men were strangers to the village and had come there with the troops. There is nothing to show that there was any riot whatever. On the other hand, the use of lethal weapons is against the prisoners, who might certainly have contented themselves with driving off the deceased, or had they killed them with non-lethal weapons, there might have been more excuse for them; but under all the circumstances of the case, and considering all the prisoners equally guilty, it having been apparently purely accidental what weapon each man was armed with, and they were all equally consenting parties, and probably in an equal state of exasperation at seeing their little stores plundered; I find them, defendants Nos. 3, 4, 5, 6, 7, 8 and 9, guilty of culpable homicide, and beg to recommend that they be imprisoned for fourteen years each with labor in irons.

Vide Archbold, page 419.

Witnesses Nos. 9 and 10.

On perusal of the above report, the following resolution was recorded by the Nizamut Adawlut (Present: Messrs. B. J. Colvin and J. H. Patton.) No. 445, dated 3rd June, 1856.

The Court doubt their jurisdiction in this case, and consider that it may be within that of the commissioner, appointed under Act XXXVIII. of 1855, whose authority extends to such portions of the district of Beerbhoom, as are included in the schedule to Act XXXVII. of 1855. By reference to the map of Beerbhoom, they find that the thannah Oopurbundah, the darogah of which place sent in the prisoners, is situated within Tuppeh Soruth Deoghur, one of the excluded divisions of the zillah; and as the commissioner under Act XXXVIII. of 1855, deals with offences committed either before or after the passing of that Act, he may be the proper authority to dispose of this case. The Court therefore request that the sessions judge will report under what circumstances he considered that he had jurisdiction in it.

In reply to the above resolution, the following letter was

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submitted by the sessions judge of Beerbhoom, No. 198, dated 7th June, 1856.

With reference to the Court's resolution No. 445, of the 3rd instant, I have the honor to remark that I tried the case referred to without thinking whether it was in my jurisdiction or not, this court and the sudder also, having tried many cases of the same description without the question having been raised.

Still I think that the case has been rightly tried—Act XXXVII. Section 1, Clause 1, especially directs that *pending* cases shall not be affected, &c., Act XXXVIII. expressly directs that *persons* who *shall be* charged, &c., &c.

The intention of the two Acts appears to me perfectly clear, that all persons who *had* been charged, or in other words, whose cases were pending before the promulgation of these two acts should be tried by the ordinary courts, but that persons who *should* be charged, or in other words, whose cases *should* be instituted after the promulgation, (even though the offences had been previously committed,) should be tried by the new courts.

The case before us was instituted on the 18th December and the parties apprehended on the 19th of the same month, the two Acts were promulgated on the 15th January, 1856; I think therefore that there can be no doubt of the jurisdiction of the court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The Court having received the sessions judge's letter* No. 198, dated 7th ultimo, applied to the Government for a copy of the instructions issued to the commissioner appointed under Act XXXVIII. of 1855. They find from

* From the junior Secretary to the Government of Bengal to the Commissioner of the Sonthal Pergunnahs, No. 1769, dated the 14th May, 1856.

I am directed to forward to you a commission issued under Act XXXVIII. of 1855, empowering you to try all persons who may be brought before you, charged with having committed the offences specified therein within the limits described in Clause 1, Section 1, of the Act above named.

I am desired to request your careful attention to the Provisions of the law, under which this commission is issued, more especially to Section 3, which makes it necessary that every sentence of death should be referred to the Lieutenant-Governor.

A copy of the Act is forwarded herewith in case you should not otherwise have immediate means of referring to it on receiving this communication.

The Lieutenant-Governor requests that the record of all trials held under this commission may be made in the English language.

From the junior Secretary to the Government of Bengal to the Commissioner of the Sonthal Pergunnahs.

I, the honorable Frederick James Halliday, Lieutenant-Governor of Bengal, send greeting. Whereas in and by an Act, passed by the Legislative Council of India, entitled "An Act to provide for the trial and punishment of rebellion and other offences committed within certain districts in which martial law has lately been proclaimed"—It is (amongst other things) enacted that it shall be lawful for the Lieutenant-Governor of Bengal, from time to

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the copy of these instructions sent with letter No. 1803, dated 18th ultimo, that the Commissioner's jurisdiction extends to the territorial limits described in Clause 1, Section 1, of the above Act, and is not restricted to such portions of the district of Beerbhoom as are included in the schedule to Act XXXVII. of 1855. Moreover they find that the Sonthal Commissioner's commission only gives him a concurrent jurisdiction with the local authorities within the limits referred to; and unless he gives special orders to the magistrate, all cases are to be tried by the regular district courts. As it does not appear that he has given any special instructions in this case, all doubts relative to jurisdiction are removed. The Court observe, however, that the sessions judge supposes that the Commissioner can try no cases instituted before the police before 15th January last, but this is a mistake. That officer may, by Clause 1, Section 1, Act XXXVIII. of 1855, try all those committed for trial after that date, provided the offence was committed within the limits of his jurisdiction, even though they were under investigation by the police and magistrate before that date.

time, as he may think fit, to issue a special commission for the trial of all persons, owing allegiance to the British Government either in consequence of their having been born within any part of the British Territories, or of their being resident therein and under the protection of the British Government, who shall be charged with having committed, either before or after the passing of this Act, within the district of Beerbhoom, or so much of the district of Bhaugulpore as lies on the right bank of the River Ganges, or so much of the district of Moorshedabad as lies on the right bank of the River Bhaugiruttee the crime of treason or rebellion, or of opposing by force of arms the authority of the British Government, or any other crime against the State, or of the crime of murder, arson, robbery or other heinous crime against person or property. Now I, the honorable Frederick James Halliday, Lieutenant-Governor of Bengal, by virtue and in pursuance of the powers and authorities b, the said Act in me vested, do hereby assign you, the said George Udny Yule, Esquire, Commissioner of the Sonthal Pergunnahs, to try all persons owing allegiance to the British Government, either in consequence of their having been born within any part of the British Territories or of their being resident therein and under the protection of the British Government, who shall be charged before you with having committed either before or after the passing of the Act above recited within the district of Beerbhoom, or such part of the district of Bhaugulpore, or such part of the district of Moorshedabad, as in the said Act mentioned, the crime of treason or rebellion or of opposing by force of arms the authority of the British Government, or any other crime against the State, or of the crime of murder, arson, robbery, or other heinous crime against person or property, and in further pursuance of the powers and authority vested in me by the said Act, I do hereby authorize you, the said George Udny Yule, Esquire, Commissioner of the Sonthal Pergunnahs, to hold a court in any part of the said district or parts of districts and there to try any person for any of the said crimes committed within any part thereof, and I do direct that any court, so to be held by you under this commission, shall have power without the attendance or Futwa of a Law Officer or the assistance of assessors, to pass upon any person convicted before such court,

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As regards the charge against the prisoners, the Court observe it is for riot attended with the murder of three individuals, as named in the calendar; but the evidence is entirely insufficient for conviction. It is by no means legally proved that the three persons named were murdered. The magistrate himself states there is no eye-witness to the murder. The witnesses only depose that they heard that their relatives had been murdered. There was no recognition of the remains found, as the remains of their relatives, and even if the prisoners' confessions be credible, that they murdered certain persons whom they found plundering their houses, these confessions cannot be admitted as proof that they killed the men, with whose murder they are charged in this case; for they say in them, they do not know whom they killed. The Court are of opinion that in the total absence of judicial proof in this case, which is apparent even on the grounds of commitment recorded in the calendar, this commitment should not have been made, and that the trial should not have resulted in conviction by the sessions judge. We acquit the prisoners and direct their release.

of any of the aforesaid crimes, any sentence warranted by law for such crime, and to cause execution of such sentence by warrant under your hand and seal of office, and that the judgment of such court shall be final and conclusive, and that the said court, so to be holden by you, shall not be subordinate or bound to report its proceedings to the Sudder Court. In witness whereof I have hereunto set my hand and seal of office the fourteenth day of May, A. D. 1856.

From the Junior Secretary to the Government of Bengal, to the Magistrates of Bhaugulpore, Beerbhoom and Moorshedabad, Nos. 1778 to 1780, dated the 14th May, 1856.

A commission, under Act XXXVIII. of 1855, having been issued to Mr. Yule, I am directed to instruct you to comply with any directions which you may receive from that officer, respecting the commitment to him for trial of any person or persons charged with the commission of any of the offences specified in Clause 1, Section 1, of the Act, within the territorial limits described in the same clause.

In the absence, however, of any express requisition from Mr. Yule, you will continue to commit such cases as at present, to the district sessions court.

From the junior Secretary to the Government of Bengal, to the Deputy Commissioner of the Sonthal Pergunnahs, No. 1781, dated 14th May, 1856.

A commission, under Act XXXVIII of 1855, having been issued to Mr. Yule, I am directed to instruct you to comply with any directions which you may receive from that officer respecting the commitment to him for trial of any person or persons charged with the commission of any of the offences specified in Clause 1, Section 1, of the Act, within the territorial limits described in the same clause.

In the absence, however, of any express requisition from Mr. Yule, you will deal with such cases in the manner prescribed by the instructions which have been issued for your guidance as deputy commissioner under Act XXXVII. of 1855.

PRESENT:

H. T. RAIKES AND J. S. TORRENS, ESQS., *Officiating Judges.*

GOVERNMENT

versus

MUSSUMUT MATUNGEENEE.

West-Burdwan.

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Case of MUSSAMUT MATUNGEENEE.

Prisoner convicted of wounding her husband with intent to kill him, sentenced by lower court to fourteen years' imprisonment. Appeal rejected.

CRIME CHARGED—Severely wounding her husband, Gopaul Dey, with an axe with intent to kill him, on the night of the 13th November, 1855, corresponding with the 18th Kartick 1262.

CRIME ESTABLISHED.—Severely wounding her husband, Gopaul Dey, with an axe with intent to kill him.

Committing Officer.—Baboo Jogeshchunder Ghose, deputy magistrate of Gurbettah.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 25th March, 1856.

Remarks by the sessions judge.—The terms of the court's decision in this case, drawn up under Act XXXIII. of 1854, were as follows.

No. 1, Gopaul Dey, husband of the prisoner.
,, 2, Moktaram Ghose.
,, 3, Bissonath Ghose.
,, 6, Gopaul Ghose.
,, 11, Kobeer Chowkeedar,
,, 12, Mudhoosoodun Dey.

"The evidence of the witnesses, noted in the margin, has established the following facts, viz., that the prisoner was married to her husband when a child; that she had never willingly resided with him; that he was always endeavouring to persuade her to do so; that he was opposed by her mother; that he had great difficulty in getting her to come to him, at the house of his employer, witness No. 2, (with whom he was living) some days before the offence was committed; that he never had had connection with her, until the night before he received the wound when the prisoner was extremely unwilling; that, on that night, he and she retired to rest in a room with only one door, which was fastened on the inside; that they lay on the same bed; that they had no connexion before the event; that the husband was awakened by the receipt of a deep wound on his face; that he sprung up and seized the prisoner, with the axe in her hand, and, taking it from her, called out to Moktaram, witness No. 2, who came to his assistance; that as he was holding the axe in one hand and the prisoner in the other, the latter opened the door, with her disengaged hand; that the prisoner was then brought outside by her husband; that witness No. 2, thinking he might strike her, took the axe from him and threw it down,

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and released the prisoner from his grasp; that witness Nos. 3, 6, 11 and 12, then came up; that when the prisoner was questioned, she orally confessed without compulsion; that she had endeavoured to kill her husband with the axe, while asleep, at the advice of Hurro Brahminee and one Sudaee Acharj, with whom she had had criminal intercourse, as the only way of escaping from his continual attempts to force her to cohabit with him. The evidence of witnesses Nos. 1, 2 and 12, further discloses, that the prisoner had a horror of her husband, because she considered him tainted with hereditary leprosy; that Sudaee Acharj had offered Moktaram a present of one rupee, a day or two before the offence was committed, on condition of his sending the prisoner away from his house: that the axe was usually kept in the husband's room; and that one Gungoo Sookool, who bailed the prisoner at Gurbettah, had induced, or forced the husband to give in a *razeenamah* to the deputy magistrate. The evidence of the native doctor, Sheikh Gholam Allee, witness No. 13, taken before the deputy magistrate, shews that the wound, which exactly fitted the edge of the axe, had, to all appearance, been inflicted with it, and that it was a most deep and severe one, dividing the cheek bone, and even striking out a tooth from the jaw. As this witness has since been promoted to zillah Bograh, the court does not consider it expedient to summon him for re-examination, from thence, nor, as the case is so clear, and the axe still fits the wound, does it think any corroborative deposition of the civil assistant surgeon of Bancoorah necessary. The weapon weighs over two *seers* and its blow only failed to destroy the wounded man because the prisoner missed her aim at his brain. Her oral confession, above described, was repeated to the darogah and deputy magistrate, nearly in the same terms, but two months afterwards she filed a petition, which is with the record, in which she tried to make out that she had been forced to confess falsely, in the first instance, by her husband and witness No. 2, who directed her to implicate Hurro Brahminee, Suddaee Acharj and one Shunker Rae; that the darogah had afterwards caused her to repeat such false statements, and offered to ensure her release, if she made them a third time, before the deputy magistrate; and that some other person had entered the room in which she and her husband were sleeping, and wounded the latter. This petition was evidently a concoction of some person at Gurbettah, very probably of her bailor, Gungoo Sookool, and her defence before the sessions court repeats its averments, which are not supported by the evidence of her two witnesses. It is curious that the evidence for the prosecution is discrepant as to the ensanguined state of the axe when found. It would appear that no blood was apparent on the edge thereof, a circumstance, probably caused by its not immediately following a blow,

inflicted by a wedge-shaped instrument, upon such a bony part as that struck. The *futwa* of the law officer convicts the prisoner, '*buzini-ghalib,*' or on violent presumption and declares her liable to *acoobut.* The court concurring in this finding, but considering the proof full and legal, convicts the prisoner of the crime charged, and sentences her, as there are no extenuating circumstances, to fourteen years' imprisonment, with labor suited to her sex, in the zillah jail. The usual warrant will at once issue, and the officiating joint magistrate will be directed to return a bloody *saree* to the prisoner, and the axe to the witness Moktaram, whose property it is. The record will be returned to Gurbettah, as soon as the period of appeal shall have expired."

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Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) There can be no doubt of the prisoner's guilt; she gives a full and credible account of her motives for attempting to take her husband's life, and of the deliberate manner in which she proceeded to accomplish her purpose. The appeal petition contains nothing relevant to the case. We confirm the sentence passed by the sessions judge.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND KISSORE MANNAH

versus

BOLARAM DASS (No. 3,) BYDEE RAOOL (No. 4,) SUTREE RAOOL (No 5,) JOY DASS (No. 6,) SHIB KURNAT (No. 7,) JOOGUL PATTER (No. 8,) BEENUD RANAH (No. 9,) NAKOOL BERAH (No. 10,) RUGGOO DASS (No. 11,) KESUB MYTEE (No. 12,) SUMBHOO MYTEE (No. 13,) BEESOO MYTEE (No. 14,) AND HEEROO DASS (No. 15.)

Midnapore.

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CRIME CHARGED.—Prisoners Nos. 3 to 14, 1st count dacoity in the house of the prosecutor and having plundered property to the value of Rs. 32-11 from his house. Prisoners Nos. 4 to 11 and 13, 2nd count and prisoner No. 15, 1st count with receiving property obtained in the above dacoity knowing the same to have been plundered.

CRIME ESTABLISHED.—Prisoners Nos. 3, 4, 5, 6, 8, 9, 11 and 14, dacoity. Prisoners Nos. 7, 10, 12, 13 and 15, receiving plundered property knowing it to have been plundered in a dacoity.

Finding and sentence of the lower court in a case of dacoity upheld.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent for suppression of Thuggee and joint-magistrate.

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Case of BOLARAM DASS and others.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 31st March, 1856.

Remarks by the officiating sessions judge.—The circumstances of this case are as follows.

About midnight of the 19th Aghun 1263, Willaity style, corresponding with the 3rd December, 1855, A. D. the prosecutor and his family were disturbed from their slumber by the noise of persons entering the premises. They found that a party of ten or twelve dacoits with four or more lighted torches had attacked the house: some four or five of them entered the room where prosecutor's son Peetoo and his wife were, bound him and threw him down, one of them alternately sitting on his neck, while others dragged his wife from her place of concealment and took ornaments off her person. While they were doing this, Peetoo witness No. 1, recognized Beesoo Mytee No. 14, with whom he was before well acquainted, as one of the party so engaged; as well as in the assault made on himself. After the departure of the dacoits and on the return of the neighbours who had followed them a short distance, Peetoo immediately told his father in their presence* of his recognition of Beesoo Mytee. A few ornaments from the persons of females of the family as also other property from the house amounting in all to Rs. 32-11 were plundered by the dacoits whose attack lasted about forty minutes. Information of this dacoity appears to have reached the darogah of police only towards midnight of the 4th, owing to the negligence of the chowkedar and another villager who have, in consequence, been dealt with by the deputy magistrate. The prosecutor has given a supplemental list of property, and at first hesitated to call the attack on his house a dacoity; but he sufficiently explains this, and no sinister motives appear to have actuated him. Amongst others named, but not committed for trial, Bydee Raool prisoner No. 4, and Shib Kurnat No. 7, were apprehended on the 6th and 7th of December on the suspicion of the prosecutor as set forth in his deposition, as also Beesoo Mytee prisoner No. 14 on the recognition of prosecutor's son Peetoo.

* Witness No. 1, Peetoo.
No. 41, Oodhub Singh.
„ 42, Obeer Munnah.
„ 44, Goobee Munnah.

On the 6th, while the house of Gooraee Dass, one of those suspected by prosecutor, was being searched, Bydee Dass† witness No. 45, nephew of said Gooraee Dass, volunteered information to the darogah which either implicated or threw strong suspicions against prisoners Bolaram Dass No. 3, Bydee Raool No. 4, Sutree Raool No. 5, Joy Dass No 6, Shib Kurnat No. 7, Joogul Patter No. 8, Beenud Ranah No. 9, Nukool Berah No. 10, Ruggoo Dass No. 11, Kisub Mytee No. 12, Sumbhoo Mytee

† Witness No. 45, Bydee Dass.

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No. 13, Beesoo Mytee No. 14; and the prisoner Heeroo Dass No. 15, was implicated in the confession of Kesub Mytee prisoner No. 12. On these grounds the prisoners were apprehended and their houses searched. The witnesses* of the *sooruthal* depose to the appearance of forcible entry into prosecutor's house by dacoits; that the staple of the door was broken; marks of his having been bound were seen by them on the arms of Peetoo, witness No. 1, and two half burnt torches were found on the premises. This is corroborated by the circumstantial evidence of the neighbours† who proceeded to the spot on the alarm of the robbery.

* Wit. No. 18, Nubboo Patter.
" " 19, Beenoo Berah.

† Wit. No. 41, Oodhub Singh.
" " 42, Obeer Munnah.
" " 44, Goobee Munnah.

The confessions before the darogah of prisoners Nos. 3, 4, 5, 6, 7, 10, 11 and 12 are deposed to by two witnesses as having been made voluntarily by the respective prisoners without coercion. That of Nos. 8, 9 and 15 by one witness and also by the darogah Ramyad Singh before whom the confessions were taken. The other witnesses disclaim knowledge of the confession of these three prisoners, but I do not consider the fact of their ignoring it, sufficient to invalidate the direct evidence that remains. In this case the deputy magistrate, Moulvee Waheedun Nubee proceeded to the spot on hearing of the dacoity. He found four or five prisoners in custody at prosecutor's house, and states that on asking them, Boloram Dass prisoner No. 3, clearly confessed his participation in the dacoity and that Heeroo Dass prisoner No. 15 and Nukool Berah No. 10 admitted receipt of plundered property under circumstances showing guilty knowledge. The darogah being then absent in search of other prisoners, the deputy magistrate deemed interference unadvisable, and returned to his head quarters without having recorded what the prisoner Boloram Dass had said to him though he embodied it shortly after in a *roobucarce.* The omission is unfortunate, but to supply it, the deputy magistrate has been named in the calendar as a witness‡ and has distinctly deposed to the above facts. Though cross-examined by prisoners his (deputy magistrate's) evidence remains unshaken, and I can find no reason whatever to doubt its truth. Property sworn by prosecutor to have been plundered in this dacoity, and recognized as his by witnesses§ whom he cited, was found in the houses or produced by prisoners Nos. 4, 5, 6, 7, 8, 9, 10, 13 and 15, as deposed by two witnesses‖ with one exception, viz. in the

‡ No. 29, Moulvee Wuheedun Nubee.

§ Witness No. 41, Oodub Singh.
" 42, Obeer Munnah.
" 44, Gobee Munnah.

‖ No. 5, Boidee Singh Chowkeedar.
" 14, Gungoo Mytee Chowkeedar.

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No. 4, Gokool Gooroo.
,, 32, Russick Dass.
,, 5, Boidee Singh Chowkeedar.
,, 33, Soondur Raool Barooah.
,, 2, Ameer Khan Chowkeedar.
,, 34, Fukeer Dolaee Chowkeedar.
,, 35, Goburdhun Geeree.
,, 8, Luchun Hutee.
,, 37, Haroo Mundul.
,, 9, Mudun Dey Barooah.
,, 38, Sam .ana Chowkeedar.
,, 5, Boidee Singh Chowkeedar.
,, 14, Gungoo Mytee Chowkeedar.
,, 2, Ameer Khan Chowkeedar.
,, 40, Gobind Naik Barooah.

case of prisoner No. 8, the second witness having contradicted himself and his manner and mode of giving his evidence inducing distrust I have given no weight to it. Some pice were found in the house of prisoner Ruggoo No. 11, which he claimed, nor can they well be identified as the property of prosecutor. Prisoners Nukool Berah No. 10, Ruggoo Dass No. 11, and Beesoo Mytee No. 14, are shown to have been absent from their houses on night of dacoity on the plea of going to an Astomee Jatra held in an adjoining village. Bydee Dass, on whose information the police was enabled to proceed against most of the prisoners, does not, in the sessions court, confirm his statement before the darogah, or his deposition on solemn affirmation before the deputy magistrate of Nugwa. He contradicts much that is important and material to which he had deposed before the latter officer. Bydee Dass has been forwarded to the magistrate to be committed for perjury. The defence set up by the prisoners has totally broken down. The witnesses who attempt to support it, being many of them parents, wives or near relatives of prisoners.

I therefore convict Beesoo Mytee prisoner No. 14, on the recognition of Peetoo Munnah witness No. 1, and the prisoner Bolaram Doss No. 3, Bydee Raool No. 4, Sutree No. 5, Joy Dass No. 6, Joogul Patter No. 8, Beenud Ranah No. 9, and Ruggoo Dass No. 11, of dacoity, on the strength of their confessions in the mofussil supported in the cases of Nos. 4, 5, 6, 8 and 9, by their guilty receipt of the property plundered in this dacoity; prisoners No. 7, Sheeb Kurnat, No. 10, Nukool Berah, No. 12, Kesab Mytee, No. 13, Sumbhoo Mytee and No. 15, Heeroo Dass are convicted of receiving plundered property knowing it to have been plundered in a dacoity, on the grounds of the confessions of all before the darogah and in the instances of Nos. 10 and 15, of their further confession before the deputy magistrate of Nugwa, added to the finding on them or production by all, save Kesub Mytee, of the property plundered in this dacoity. They have been accordingly sentenced as stated below.

The enhanced punishment to Ruggoo Dass has been awarded on the consideration of a previous conviction and sentence for

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dacoity as shewn by a warrant of this court dated 14th May, 1849, and confirmed by the Court of Nizamut.

Sentence passed by the lower court.—Prisoner No. 11, to ten (10) years' imprisonment with labor in irons. Prisoners Nos. 3, 4, 5, 6, 8, 9 and 14, to seven (7) years' imprisonment each with labor in irons. Prisoners Nos. 7, 10, 12, 13 and 15, to three (3) years' imprisonment each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The confessions of the prisoners Nos 3, 4, 5, 6, 8, 9 and 11, in the mofussil, are corroborated by the finding of the property plundered; and considering the manner in which this property has been identified on the part of the prosecutor, and the inconsistency of the defences set up, both before the magistrate and the sessions court, which defences were wholly unsupported by the witnesses named by the several prisoners, we see no reason to interfere with the sentence passed.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND
J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND SOBBAN

versus

KIRTEE (No. 7,) DODA (No. 8,) GIDWA (No. 9,) BUHODEEA (No. 10,) FUQUEERA (No. 11,) AND DHOWTAL (No. 12.)

Patna.

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Case of KIRTEE and others.

Appeal rejected.

CRIME CHARGED.—Burglary in the house of the prosecutor with forcible resistance of Hazaree Chowkeedar, in the discharge of his duty.

CRIME ESTABLISHED.—Burglary in the house of the prosecutor with forcible resistance of Huzaree Chowkeedar in the discharge of his duty.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of the city of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 16th April, 1856.

Remarks by the sessions judge.—Prisoners plead *not guilty*.

On the night of the 12th of March, towards morning, prosecutor was awoke by a jingling noise among his brass utensils; he immediately ran round to the outside of the house and there found Hazaree Chowkeedar witness No. 1, struggling with the prisoner Dhowtal No. 12, and several other thieves. He called out for help and some neighbours coming up, the thieves ran

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away; recognised the prisoners from Nos. 7 to 12, inclusive, saw them all distinctly. There was a hole made through the wall into his house from close to where the Chowkeedar was struggling with the thief, no one was arrested that night, but notice was given at the thannah early next morning when the prisoners were apprehended, Hazaree witness No. 1, was going his rounds when he saw the hole in prosecutor's wall and some thieves standing by it, he seized one and recognized Dhowtal prisoner No. 12, who resisted, and aided by the others escaped; witness received several severe blows from Dhowtal and those assisting him. Before the magistrate he deposed to have recognised Dhowtal personally, the remainder by their voices only, before the sessions he swears that he recognised the whole of them at the time, notwithstanding the darkness, that he saw and distinguished their features. Khurug, witness No 2, hearing the noise ran out of his house and swears positively to have seen all the prisoners at the time, to have recognised them, knew them all well before, tated the same before the magistrate.

Deela, witness No. 3, a shop-keeper in the village, ran out on hearing prosecutor's cries, saw Dhowtal prisoner No. 12, struggling with Hazaree Chowkeedar, saw all the other prisoners, recognized them all, knew them all well before, does not remember what he stated before the magistrate, but is certain he saw and recognized all the prisoners by sight and not by voice only.

Benee, witness No. 4, also a shop-keeper, the same as No. 3. The prisoners all plead enmity on part of Hazaree Chowkeedar and the prosecutor as leading them to the accusation, each gives some frivolous cause for such enmity, their defence is altogether untrustworthy. Kirtee and Dhowtal admit their previous convictions. The former had been imprisoned five years for highway robbery and two years for theft, the latter three years for theft. Sixteen witnesses called for the defence speak generally to the present good character of the prisoners, notwithstanding Kirtee No. 7, and Dhowtal No. 12, being known as old offenders.

The law officer finds the prisoners guilty on violent presumption, in which I concur.

I see no reason to doubt the evidence of the prosecutor and the four very respectable witnesses, the prisoners are their fellow-villagers and the night was not so dark as to prevent recognition of previously well known figures and features. The chowkeedar's wounds which are still apparent, especially a deep cut on the crown of the head, and the undoubted existence of the "*sind*" in prosecutor's wall are primâ facie evidence of the burglary and forcible resistance. The identification of the prisoners at once within a few hours at the thannah, and the known bad character of two among them, leave no room for doubt as to their guilt. I convict them all of burglary and forcible resistance of a chowkeedar in the execution of his duty

and sentence Kirtee No. 7, and Dhowtal No. 12, as old offenders to seven years' imprisonment with labor in irons, and Doda No. 8, Gidwa No. 9, Buhodea No. 10, and Fuqueera No. 11, to five years' imprisonment with labor in irons.

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Case of KIRTEE and others.

The magistrate has omitted all mention in his proceedings of the previous convictions of Kirtee and Dhowtal; there are one or two other slight irregularities in his calendar, which will be brought to his notice in a separate letter.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The evidence of the witnesses to the recognition of the prisoners is distinct. They were all named the morning after the occurrence by the several witnesses, who came to the assistance of the chowkeedar, when he was endeavouring to arrest the prisoner Kirtee. We see no reason to interfere with the order of the sessions judge and reject the appeal accordingly.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT

versus

UMRITH HUJJAM (NO. 11,) AND GUDDYE MUNDER (NO. 12.)

Bhaugulpore.

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Case of UMRITH HUJJAM and others.

Prisoners convicted of murder in the Sonthal insurrection, sentenced capitally.

CRIME CHARGED.—1st count, wilful murder of Indurmunjha Burkundaz of thannah Hajarpoorah; 2nd count, aiding and abetting the Sonthal insurrection in having committed the murder.

Committing Officer.—Mr. H. Richardson, magistrate of Bhaugulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 14th March, 1856.

Remarks by the officiating sessions judge.—This trial was conducted on the 13th and 14th instant by the aid of the jury* marginally noted.

* Lala Sookhlal, Lala Jeetun Lal and Nizabut Ally Khan.

Prisoner No. 11, pleaded *not guilty*, prisoner No. 12, *guilty*.

This murder occurred during the Sonthal insurrection in the month of Assar, date unknown. Mussumut Heereeah, witness No. 1, deposes that a body of armed Sonthals came to plunder the village of Heeranpore, she, with her paramour, named Indurmunjha, who was a burkndaz stationed at a pharee Heeranpore of thannah Hazarpoorah, fled to Sundurpore and took refuge in the

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house of Bechoo Hujjam, brother of prisoner No. 11, who advised them to remain with him, as the Sonthals would not plunder his house; while concealed, the Sonthals arrived at Sundurpore, prisoner No. 11, being a Thacoor went to Bechoo's house, and brought the deceased out of it, in her presence and took him to the eastward of the village, when prisoner No. 11, ordered the Sonthals assembled to kill him; she fell at prisoner's feet, beseeching him to spare deceased's life, he would not listen to her entreaties, but went and called prisoner No. 12, from his house at Juburdah (which is only two or three *russees* from where the murder took place) he, prisoner No. 12, came armed with a bow and arrows, and "*phursa*" or battle-axe; No. 11, ordered him to kill the burkundaz, which she distinctly heard. Obeying his injunctions prisoner No. 12, deliberately shot deceased with an arrow on the right shoulder, witness went to extract it when prisoner No. 12, shot another arrow, which struck the unfortunate man near the left eye, and went through the head, prisoner No. 12, then struck deceased with the "*phursa*" on the left side of the neck; on receiving this blow deceased fell and witness No. 1, threw herself on him and while in this position prisoner No. 12, again struck him (the deceased) with the "*phursa*" on the neck when he died. Prisoner not satisfied with having perpetrated one murder struck witness No. 1, two severe blows with the "*phursa*" on the left side of her cheek, she became insensible and remained there about two hours. Afterwards she somewhat recovered and went to mouza Heeranpore (leaving the corpse on the spot) and narrated all that had occurred, to Nuffer Chowkeedar, who allowed her to remain in his house and when Mr. Assistant Magistrate Pontet was at Mohespore in December last, she reported the circumstance to him and he ordered the apprehension of the prisoners.

Witnesses Nos. 2 and 3, who had also fled from Heeranpore and taken refuge at Sundurpore and were themselves forcibly taken out of the houses in which they were concealed, and made over to the Sonthals, witnessed the whole tragedy, being only two or three *hauts* from the prisoners, when the order was given by No. 11, which they distinctly heard, and saw the fatal blows delivered by prisoner No. 12. Their depositions are so consistent before the foujdary and this court that full credence can be given to them. After the murder of the burkundaz, there was a little confusion amongst the Sonthals, of which they availed themselves and absconded, otherwise they might have met with a similar fate.

Witnesses Nos. 4 and 5, depose to the apprehension of prisoner No. 11, and although No. 4, witness, is entered in the calendar as cognizant of the finding of Rs. 20, on his person when apprehended, yet he does not depose to these facts, but witness No. 5, burkundaz bears testimony to this circumstance.

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Witness No. 9, deposes to the apprehension of prisoner No. 12, the other witnesses, Nos. 7 and 8, were not in attendance at the court. Prisoner No. 11, was first apprehended and when taken before Mr. Assistant Magistrate Pontet denied, on 26th December 1855, the charge implicating prisoner No. 12, and admitted that 20 rupees were found on his person which he was taking to the Tarapore zemindaree cutcherry to pay as rent, his annual payments amounting to 32 rupees in three *kists* and named six witnesses to depose in his behalf. Mr. Magistrate Richardson did not take this prisoner's statement again, but only his supplementary statement after committing him.

Prisoner No. 12, made a full confession before Mr. Assistant Magistrate Pontet on the 2nd January, 1856, detailing most minutely all that transpired in this cold-blooded murder. Witness No. 9, has deposed that the confession was voluntary. Witness No. 8, did not attend this court, but has attested the confession. Witnesses Nos. 11 and 12, depose to prisoner's, No. 12's, confession before magistrate being voluntary. Witnesses Nos. 13, 14 and 15, testify to the circumstances of the case as they heard them.

Prisoner No. 11, in his defence, implicates prisoner No. 12, and in endeavouring to exculpate himself, describes what occurred on the occasion, which proves his presence when the deceased was murdered, and wishes to make it appear that the Sonthals were displeased with him for concealing the burkundaz and Bengalees, stating that prisoner No. 12 at the same time not only killed Indurmunjha, but also the wife of Chand Bhuggut and Kishun Chand's father's kept woman.

Witnesses Nos. 17. 19, 21, and 27 depose merely to prisoner's (No. 11's) former good character, but since he became a Thakoor, he has become quite an altered person.

Prisoner No. 12 in his defence has again fully confessed to the perpetration of the murder with his own hands, under orders of prisoner No. 11, and describes how he was called on three occasions by his accomplice, and how he inflicted the blows on his victim with a "*phursa*," that no enmity existed between himself and the burkundaz, with whom he was previously acquainted, that he struck Musst. Heereeah with a "*phursa*" and inflicted the wounds apparent on the side of her cheek and neck.

As there is no *sooruthal* to Musst. Heereeah's wounds with the *misl*, I had them measured, one is ten fingers long and the other six ditto. A "*phursa*" wound was apparent on the back but she cannot state who inflicted it.

The jury found a verdict of guilty against both the prisoners, in which I concur, and considering all the circumstances connected with the atrocious murder, the presence of prisoner No. 11, who deliberately called prisoner No. 12 and ordered him to perpetrate it, and prisoner No. 12 by his confession having obey-

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ed the mandate, and without the least provocation murdered the burkundaz, I would recommend that both the prisoners be sentenced to capital punishment at Bhaugulpore.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The prisoners, in their confessions, admit the murder of the deceased at the time, and in the manner deposed to by the witnesses Nos. 1 and 2. Prisoner No. 12, attempts to justify his having struck down the deceased with an axe and killed him, merely by his having been directed to do so by the prisoner No. 11, whose orders, as the latter was a Thakoor, he considered himself bound to obey. Independently of the confessions, however, the evidence of witness No. 1 and witness No. 2, would be sufficient to convict the prisoners, both of whom admit the presence of these two witnesses at the time of the murder, which is shown to have been a most unprovoked, deliberate and atrocious one, deliberately ordered by prisoner No. 11 and, as deliberately, actually perpetrated by No. 12. We accordingly convict them both of wilful murder, as charged in the first count of the calendar, and condemn them to suffer death.

PRESENT:

H. T. RAIKES, ESQ., *Judge* AND
J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

KHOODEERAM CHOWKEEDAR.

West-Burdwan.

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July 7.

Case of KHOODEERAM CHOWKEEDAR.

Appeal rejected.

CRIME CHARGED.—Perjury, in having in the case of dacoity in the house of Ramlochun Sircar, on the 6th October, 1855, corresponding with the 21st Assin, 1262, B. S. intentionally and deliberately deposed under solemn declaration taken instead of an oath before the assistant joint-magistrate of Mungulpore, with full powers, to the effect that the "*thalla*" belonged to Hurry Baoree and that the two brass *ghurras were* found in the house of Ramsoonder in his presence, and that he identified those articles; and again on the 1st February, 1856, corresponding with the 20th Magh, 1262, intentionally and deliberately deposed, under solemn declaration taken instead of an oath before the sessions judge of West-Burdwan, "that he did not see the plundered articles, neither did he say anything regarding them before the magistrate, and that he did not even recognize them." Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

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Case of KHOODEERAM CHOWKEEDAR.

Committing Officer.—Mr. H. Rose, officiating magistrate of Bancoorah.

Tried before Mr. P. Taylor, sessions judge of West-Burdwan, on the 7th March, 1856.

Remarks by the sessions judge.—The terms of the court's decision in this case drawn up under Act XXXIII. of 1854, were as follows :

" The particulars of this case are sufficiently set forth in the charge, which has been fully established by the evidence of witnesses Nos. 1 and 2, the mohurrirs who wrote his depositions before the late assistant with full powers of joint-magistrate, Lord H. U. Browne, on the 5th and 6th October, 1855, as well as by that of the chuprassee, witness No. 3, who administered the solemn declaration to him, on the last of the above-mentioned dates,and that of witnesses, Nos. 4 and 5, two Burkundazes, who heard him depose before this court in the dacoity case. The prisoner, who pleaded *not guilty*, makes no defence and names no witnesses.

" The *futwa* of the law officer convicts the prisoner of *buzun-i-ghalib*, or on violent presumption, and declares him liable to *tazeer*. In this finding the court concurs, except that it considers the proof full and legal, and therefore convicting the prisoner, sentences him to three years' imprisonment with labor in irons in the zillah jail.

" The usual warrant of imprisonment will at once issue, and the record will be returned, as soon as the period of appeal shall have expired.

" Witness, No. 1, stated that it was not customary in the Mungulpore court to administer solemn declaration to witnesses before their examination in chief was taken, and that the omission had been made in taking that portion of the prisoner's depositions in the dacoity case which was committed to paper on the 5th October. Such was not, however, the case with regard to the deposition of the 6th idem, which contained the statements on which the charge of perjury was based.

" The officer now in charge of the Mungulpore division has already been cautioned, through the officiating joint-magistrate, to avoid the irregularity above alluded to, in future."

Remarks by the Nizamut Adawlut.—(Present : Messrs. H. T. Raikes and J. S. Torrens.) We concur in the conviction of the prisoner. The contradictory nature of his statements as to receiving the property taken from the houses of Hurree Baoree and Ramsoonder is quite apparent. Prisoner pleads in his petition of appeal, that he made the opposite statements merely owing to his ignorance and want of education, but such plea cannot be heard, the perjury being held by the judge to have been evidently wilful.

PRESENT:

H. T. RAIKES, Esq., *Judge* AND
J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND LALCHUNDER JHA
versus
NONARAM MANJHEE (No. 3,) JOOLA MANJHEE (No. 4,) BHADOO MANJHEE (No. 5,) GOOLIA MANJHEE (No. 6,) JANKEE MANJHEE (No. 7,) AND PEEROO MANJHEE (No. 8.)

Beerbhoom.

1856.

July 7.

Case of NONARAM MANJHEE and others

Prisoners, accomplices in a riot with murder in the Sonthal rebellion, transported for life.

CRIME CHARGED.—Riot attended with wilful murder of Gour Jha, brother of the prosecutor.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 16th April, 1856.

Remarks by the sessions judge.—This is one of the Sonthal cases sent up for trial for riot attended with murder, the brother of the murdered man being the prosecutor. It would have been better, I think, had the charge been rebellion and murder, and Government the sole prosecutor, but for reasons recorded in another case, I did not think fit to alter the commitment.

The evidence shows that the prisoners were part of a gang of Sonthals who, having been engaged in rebellion, were driven out of their villages, which were destroyed by the military and camp followers; on their return finding their village, destroyed, they again commenced plunder. The inhabitants of the neighbouring villages for the most part made their escape, but one man, the deceased, was unfortunately caught by the prisoners as he was sitting smoking, under a tree; he was taken to some distance and then and there killed by the prisoners Nos. 7 and 8, the remainder having assisted in taking him away and being present at the time.

The prisoners were apprehended at instance of the brother of the deceased, who had heard the above account from the same persons that have given the evidence. The case was enquired into in the usual manner.

In the preliminary proceedings the prisoners confessed their complicity in the affair, though they denied the actual murder. Before me they gave a general denial, except that No. 8, allowed that his sword was used to kill the deceased.

The jury found the prisoners guilty in which I concur.

The evidence is clear and distinct that the deceased was taken from the place where he was, by the whole of the prisoners

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and coolly murdered by Nos. 7 and 8. There is not in this case even the palliation that they were under excitement at the time. Under these circumstances I recommend that prisoners Nos. 3, 4 and 5, be transported for life beyond sea, and that prisoners Nos. 7 and 8, be condemned to death.

Remarks by the Nizamut Adawlut.—(Present: Messrs H. T. Raikes and J. S. Torrens) There appears from a note appended to this case by the presiding judges, Messrs. Colvin and Patton, that some question as to the jurisdiction of the court was raised with reference to Act XXXVIII. of 1855; but we have been given to understand that those judges have since ruled that the cases postponed by them on this account should proceed in due course; we have therefore not awaited the returns called for from the local authorities.

The prisoners in this case were all charged with the wilful murder of Gour Jha, under the circumstances detailed in the sessions judge's letter of reference.

The judge has therein stated that "the evidence is clear and distinct, that the deceased was taken from the place, where he was, by the whole of the prisoners, and coolly murdered by Nos. 7 and 8."

The sessions judge has therefore recommended that these two men be sentenced to death, and that the other prisoners be transported for life.

We find that the prisoners one and all confessed before the magistrate to having acted in concert with others in plundering the village of Kooldanga, and that two of the chief manjhees, decapitated the deceased, Gour Jha.

As to the clear and distinct evidence, referred to by the sessions judge, to the fact that the prisoners, Nos. 7 and 8, were those by whose hands the murder was committed, we must observe that the sessions judge has evidently omitted to compare the statements of the witnesses, as given before himself, with their previous depositions in the foujdary. Had he done so he could not have failed to see that the witnesses, who depose before him to having seen these two men cut off the head of Gour Jha, merely stated in the foujdary that the prisoners seized Gour Jha and killed him; but that they did not witness the murder, having ran off and concealed themselves, when Gour Jha was in their power; and on their return found his headless trunk.

With this manifest discrepancy between their evidence at the trial and before the foujdary, we are surprised that the sessions judge should have so readily trusted to their statements before himself; and we can only attribute it to an omission on his part to look at their previous depositions. This would be a serious oversight in any trial, but it is the more remarkable on the present occasion, when so grave a charge was pending over

1856. July 7. Case of NONARAM MANJHEE and others.

the prisoners, and the judge has recommended to this Court that a capital sentence should issue against two of them.

The evidence itself, we consider, is sufficient, together with the confessions of the prisoners before the magistrate, to connect the prisoners with the crime charged, as acting together in concert, and aiding and abetting each other in the murder of the deceased; but we consider it altogether insufficient to bring home the perpetration of the murder to any one of these individuals; and we therefore sentence them to transportation for life.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND
J. S. TORRENS, Esq., *Officiating Judge.*

West Burdwan.

1856. July 8. Case of RAMDHURY CHOWKEEDAR.

Prisoner, convicted by lower court of perjury, acquitted of wilful falsehood.

GOVERNMENT
versus
RAMDHURREE CHOWKEEDAR.

CRIME CHARGED.—Perjury in having in a case of dacoity in the house of one Bhoobun Doss, on the 26th September, 1855, corresponding with the 11th Ashin, 1262 B. S., intentionally and deliberately deposed under solemn declaration taken instead of an oath before the assistant joint-magistrate of Mungulpoor with full powers, to the effect, that on hearing a noise he came out towards the north part of the village and saw about sixteen or seventeen dacoits escaping and that he followed the remaining four dacoits to the village of Bijpoor, and in having on a question being put to him, viz. Did you see Mudhoo and Chakur reach their homes? replied, "Yes." Again in having on the 16th February, 1856, corresponding with the 5th Falgoon, 1262, intentionally and deliberately deposed under solemn declaration taken instead of an oath before the sessions judge of West-Burdwan, that on hearing a noise from Radhaee thanadar and others, he went first to Ekriah and then to Bijpore and in having on a question being put to him, said that he did not follow the dacoits to Bijpore nor see any dacoit nor Mudhoo nor Chakur reach their homes, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Rose, officiating joint-magistrate of Bancoorah, West-Burdwan.

Tried before Mr. Pierce Taylor, sessions judge of West-Burdwan, on the 7th March, 1856.

1856. July 8. Case of RAMDHURY CHOWKEE-DAR.

Remarks by the sessions judge.—The terms of the court's decision in this case drawn up under Act XXXIII. of 1854, are as follows:

"The particulars of this case are sufficiently set forth in the charge, which has been fully established by the evidence of witnesses Nos. 1 and 2, the mohurrirs, who wrote the deposition of the prisoner in the dacoity case, in the presence of the assistant with full powers of joint-magistrate, Lord H. U. Browne, in charge of the Mungulpoor division, on the 26th of September, 1855; witness No. 3, the chuprassee, who administered the solemn declaration to him on that occasion and witnesses Nos. 4 and 5, a burkundauz and chuprassee, who heard him depose in the above case before the sessions court. The prisoner who pleaded guilty, confesses that he was guilty of perjury, through fear of the darogah.

"The *futwa* of the law officer fully convicts the prisoner, and declares him liable to *tazeer.* The court concurs and therefore convicting the prisoner, sentences him to three years' imprisonment with labor in irons in the zillah jail.

"The usual warrant of imprisonment will at once issue, and the record will be returned, when the period of appeal shall have expired."

Remarks by the Nizamut Adawlut.—(Present: Messrs H. T. Raikes and J. S. Torrens.) The prisoner urges in appeal that he had no intention to speak falsely at the sessions, but being an ignorant man, and much confused, when examined in open court, he could not remember what he had previously said when before the magistrate.

We find that he never stated in the foujdary in his examination in chief, that he had himself recognised Mudhoo and Chakur; only that Radhaee had told the Mundul and chowkeedar of Bijpore that those men had just entered the village after committing the dacoity; that they were then summoned from their houses and arrested; and on a single question being asked him if he saw them enter their houses he answered affirmatively.

At the sessions the deposition he gave is in substance the same except that he did not see the two men named enter their houses, and that when cross-questioned he pleaded forgetfulness of what he had stated to the magistrate.

It does not appear to us, from a comparison of his two statements, that the prisoner had any deliberate intention to deceive the court, or to conceal his real knowledge. A period of five months had elapsed and much allowance must be made for want of accuracy in persons of the prisoner's class.

We acquit the prisoner of wilful falsehood and direct his release.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq. *Officiating Judge.*

GOVERNMENT AND SHEIKH ZUMIROODDEEN

versus

MUDHAOO (No. 13,) AND KULLOO (No. 14.)

Patna.

1856.

July 8.

Case of MUDHAOO and another.

Appeal rejected.

CRIME CHARGED.—Burglary and theft of property valued at Company's Rupees 288-10, belonging to the prosecutor Sheikh Zumirooddeen.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 28th April, 1856.

Remarks by the sessions judge.—Prisoners plead *not guilty.* The complainant Sheik Zumirooddeen is an Aumeen in the employ of the Railway Company; he was encamped at Munair close by the mosque; was in the habit of sitting up late; had seen prisoners hanging about his camp and knew them by sight; on the night of the robbery had seen them outside his tent till past midnight; went to bed himself about two; was awoke by a noise in the tent, where there was a light; distinctly saw and recognised the two prisoners carrying off a gun case, called out thief and with his servant pursued the robbers, who dropped the gun case and escaped; notice was immediately given at the police station close at hand, and prisoners were apprehended next morning; part of the property was found scattered in a Rahur field and the box in which they were usually kept was also found, broken open, on the same spot. The box and property produced in court are those stolen from the tent.

Witnesses Nos. 1, 2 and 3, are servants of complainant, they were sleeping round the tent; heard their master call out thief and waking up, saw the prisoners running away with the gun case; knew them well from having seen them often sitting on the steps of the mosque near the tent; knew their names and gave immediate notice to the police.

The prisoners are defended by a mooktear who pleads that they were not apprehended on the spot, and that though they were apprehended the same night, or early morning, no property was found on them; that Mudhaoo prisoner No. 13, is not as described by the police a houseless man, but lives in a home of his own with respectable connections. That Kishundyal witness No. 1, who deposes to having seen and recognised the prisoners

at the time of theft did not mention their names at the police chokee, when he first gave notice of the theft.

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Case of MUDHAOO and others.

The witnesses for the defence speak generally to the good character of the prisoners, and prove that they are both householders of Munair, but there is nothing in their statements to shake that of the evidence for the prosecution which is clear and convincing.

The law officer convicts on the evidence of the prosecutor and three eye-witnesses to the theft, burglarious entry into the tent, and identification on the spot of the prisoners as concerned in the same, in which I concur.

The prisoners Mudhaoo No. 13, and Kulloo No. 14, are convicted of burglary and theft of property valued at Rs. 288-10, and sentenced to four years' imprisonment with labor in irons and to pay a fine of Rupees 246-6-6, under Act XVI. of 1850, being the estimated value of the unrecovered property.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) Three eye-witnesses depose to the identity of the two prisoners as those whom they saw in the act of making off with the prosecutor's property.

We see no reason to interfere with the conviction and sentence.

PRESENT:

H. T. RAIKES, AND J. H. PATTON, ESQS., *Judges.*
AND J. S. TORRENS, ESQ., *Officiating Judges.*

GOVERNMENT

versus

NEAMUT SHEIKH (No. 3,) AND PEEROO SHEIKH (No. 4.)

Rajshahye.

1856.

July 12.

Case of NEAMUT SHEIKH and another.

Prisoners in a case of theft, &c. found guilty upon violent presumption.

CRIME CHARGED.—Nos. 3 and 4, stealing property belonging to Captain Warmer.

CRIME ESTABLISHED.—No. 3, theft of his master's property, and No. 4, being an accessary after the fact to the above theft.

Committing Officer.—Mr. A. J. Jackson, officiating magistrate of Rajshahye.

Tried before Mr. Lowis Jackson, officiating sessions judge of Rajshahye, on the 19th March, 1856.

Remarks by the officiating sessions judge.--The prisoner No. 3, *Neamut*, was in the service of Captain Warmer where he had been for five years, during this time he had been once convicted of a theft, not indeed in his master's house, for which he had been sentenced to a month's imprisonment, and on the expiration

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Case of NEAMUT SHEIKH and another.

of his sentence, Captain Warmer unfortunately took him back into employ.

In the month of January last, Captain Warmer's khansamah witness No. 1, Baboo Khan, being unwell, was absent from his duty for a fortnight, during which time the prisoner had charge. Within that period Anund Chowkeedar and Pana Khan saw Neamut's brother prisoner No. 4, Peeroo Sheikh, who also had been formerly in the same employ, bring a hamper of plates, at the top of which was one resembling the plate No. 8, now in court, to the shop of Ram Tonoo prisoner No. 5, and Toolshee No. 6, who have their shops in the same premises, in fact in the same room. There the witnesses saw bargaining for the price of the plates proceeding, but cannot say what price was ultimately agreed on.

A few days afterwards, the khansamah, Baboo Khan, having recovered his health, was going to his duty, when, passing Ram Tonoo's shop, he saw there exposed for sale some of the plates now produced in court, which he felt satisfied was his master's property, he stopped and made enquiries at the shop and discovered that there were a good many more plates there belonging to Captain Warmer. On inquiry the two shopkeepers at first declared that they had purchased the articles from a Dacca-trader, but on being pressed and reassured by the khansamah in a manner more adroit than strictly justifiable, they said they had purchased the articles from Neamut's brother. The plates and defendants were taken to Captain Warmer, and on his identifying the property, they were made over to the police, and Neamut and Peeroo were taken into custody.

The khansamah's statement is supported by Haroo Khulifa and Guriboollah Chowkeedar, witnesses Nos. 2 and 3, and the same by Neamut and Peeroo to the two shopkeepers is proved by two witnesses Anund Chowkeedar and Pana Sheikh who saw the transaction from an adjacent shop.

Neamut and Peeroo allege nothing in their defence, except an ill-will between themselves and Baboo Khan, which he denies and which they entirely fail in proving.

I have therefore no hesitation in convicting Neamut on the circumstantial evidence of theft of his master's property, and Peeroo of being an accessary after the fact.

The case as regards Ramtonoo and Toolshee is less clear. On the one hand it is proved that they purchased the plates in broad day-light and without concealment, and that they asked a neighbour what the fair price of such articles might be. On the other hand the prevarication to which they at first had recourse when questioned by Baboo Khan is rather inconsistent with *bona fides* ; there is no evidence to show at what price they purchased the articles, and as it seems probable that they may have at first bought the articles innocently and only suspected

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the real state of the case when questioned by the Khansamah, I think they must have the benefit of the doubt and be acquitted. No doubt they acted, to say the least, with gross want of care, and they do not come out of the matter by any means with clear hands.

The Moulvee having also found the prisoners Nos. 3 and 4, guilty to the extent above specified and acquitted the prisoners Nos. 5 and 6. It is ordered :

That prisoner No. 3, Neamut be imprisoned for three years with hard labor and irons from this date, and No. 4, Peeroo Sheikh be imprisoned, in like manner, for one year and that Ramtunoo No. 5 and Tulshee Doss No. 6, be acquitted and released.

This was a case within the magistrate's competency to decide, and with reference to the annexed correspondence,* he will be warned not to commit in future, cases within his own powers.

Remarks by the Nizamut Adawlut.—(Present : Messrs. H. T. Raikes, J. H. Patton and J. S. Torrens.)

Mr. H. T. Raikes.—The evidence on record proves that the prisoner, Neamut, as kidmutgar of Captain Warmer had charge of the stolen property, and was seen to dispose of it in company with Peeroo the other prisoner, to the shop-keepers, charged with receiving it. The prisoners deny the charge and allege it has been got up by Baboo Khansamah, of which, however, there is not the slightest proof.

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* From the officiating sessions judge to the officiating magistrate of Rajshahye, No. 34, dated the 19th March, 1856.

With reference to Construction No. 391, Paras. 5 and 6, I have the honor to request that you will state the specific circumstances which have led you to commit, to this court for trial, the prisoners named in the margin.*

* Neamut Sheikh.
Peeroo Sheikh.
Ramtonoo Dass.
Toolshee Dass.

2. The prisoners are charged with theft and felonious receipt, respectively, of property under the value of 50 Rs. and as against prisoner No. 3, there is this circumstance of aggravation that he was a domestic servant of the owner of the property at the time of the alleged theft. In regard to him therefore the case is one which comes within the scope of Regulation XII. of 1818, Section 3, Clause 4.

3. The previous conviction of this prisoner was for theft of property considerably under 10 Rs. in value which under Regulation VI. of 1824, Section 5, is not one which removes the case from your competency to decide.

4. These circumstances therefore leaving the case one within the magistrate's jurisdiction as regards the prisoner in question, and still more so as regards the remaining prisoners, you should have recorded some specific reason for the commitment which you are now requested to do.

From the officiating magistrate to the officiating sessions judge of Rajshahye No. 122, dated the 19th March, 1856.

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Case of NEAMUT SHEIKH and another.

The sessions judge has convicted Neamut of theft and Peeroo of being an accessary after the fact on *full legal* proof.

I concur in their conviction, but must observe that it is a mistake of the sessions judge to call the evidence *full* legal proof. There is no direct evidence of any kind to the perpetration of the theft; the prisoner Neamut was in charge of the property and is proved to have sold it, these two known facts lead to the inference, amounting to probable presumption that he stole the property also; but the proof does not go further. The same remarks would apply to the other prisoner, except that he should hav› been convicted as an accomplice.

I find them both guilty, but on presumption, not on full legal proof, which form of words is intended to signify a conviction on *direct* evidence to the perpetration of the offence. See Clause 3, Section 2, Regulation LIII. of 1803.

Mr. J. S. Torrens.—I concur in the conviction of the prisoners; but adverting even merely to the abstract of the evidence, as give . in the remarks by the sessions judge, I cannot coincide in the opinion that there has been any actual mistake on his part, in respect to the nature of the proof, such as noticed by Mr. Raikes. It appears to me that on the evidence there is full legal proof, according to the ordinary signification of the words, of the guilt of the prisoners, as they are charged; and the mistake on the part of the judge, if it in reality existed, could properly be held only the consequence of the form in which he is required to report. In the last column of the form printed No. 13, his remarks must be given, and in a preceding column No. 11, there is a heading of "convicted on *violent* presumption or on full legal proof." This column is filled up in this instance with the terms on "full legal proof" as it ordinarily is, because the heading which was prepared according to terms of Mahomedan law, gives in English in fact no real distinction; as *violent* presumptive evidence cannot in common sense be held other than full legal proof. I would therefore have the heading of the column amended, so that sessions judges may not be held to commit mistakes apparent only from an erroneous form to which they must adhere. The last column, containing their remarks and the ground of their judgments, would be quite sufficient as to the nature of the proof.

I have been forced into the necessity of recording these

The circumstances under which I committed the prisoners referred to in your letter No. 34, of this day's date were these.

Prisoner No. 3 has been already convicted of a petty theft and was also a servant of the owner of the property stolen. Though neither circumstance was sufficient of itself to put the case out of my jurisdiction, yet the two together appeared to demand a heavier amount of punishment in case of conviction than I am empowered to award, and I therefore committed the case to the higher court for trial.

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remarks to a conviction, in which I agree, because I do not consider the mistake, noticed, to have been committed; I agree that the second prisoner, Peeroo, should properly have been committed as an accomplice.

Mr. J. H. Patton.—These papers have come to me owing to a difference of opinion between the judges who presided at the trial of the appeal, as to the precise nature of the proof adduced against the prisoners. Mr. Raikes holds that this does not go further than "*probable presumption,*" and that the sessions judge was wrong to call the evidence "*full legal proof,*" while Mr. Torrens is of opinion that "violent presumptive evidence cannot in common sense be held other than "full legal proof," and that therefore the evidence against the prisoners amounted to full legal proof. He absolves the sessions judge from all blame and would alter the heading of the columns in statement No. 6, in order "that judges may not be held to commit mistakes, apparent only from an erroneous form to which they must adhere."

I concur with Mr. Raikes, in both views of the question. There being no direct evidence of the theft, a conviction could only be had on presumptive evidence, and presumption in the abstract is as distinct from full legal proof as two opposites can well be; for one is direct, the other indirect, one original, the other derivative, one express and positive, the other implied and inferential. And I hold the sessions judge blameworthy, because he has made not only one error in designating the evidence full legal proof, but committed a second in showing under column No. 11, that the prisoner had been convicted on full legal proof, and recording in his explanation and remark under column No. 13, that the conviction rested on "*circumstantial evidence.*" I am opposed to the alteration in statement No. 6, proposed by Mr. Torrens, as unnecessary. No sessions judge ought to confound the evidence which constitutes full legal proof with that which establishes presumption.

Extract paras. 1 to 5, from a letter from the officiating sessions judge of Rajshahye to the officiating Register of the Nizamut Adawlut, No. 39, dated 23rd July, 1856.

I have this morning received the orders and proceedings of the superior court in the case noted in the margin,* annexed to your letter under date the 12th July, 1856.

* Government and Baboo Khansamah *versus* No. 3, Neamut Sheikh. ,, 4, Peeroo Sheikh.

2. The remarks of the presiding judges, and in particular the somewhat stringent observations recorded by Mr. Patton, have induced me to prepare the following explanation, which I request you will submit to the Court, in vindication of my judicial character and (if the Court should think fit) with a view to its being appended to the report of the case.

PRESENT:

H. T. RAIKES, Esq. *Judge.* AND J. S. TORRENS, Esq. *Officiating Judge.*

GOVERNMENT AND KULLOO MISSER

versus

BOLAKI.

Patna.

1856.

July 14.

Case of BOLAKI.

Appeal rejected.

The crime established amounted to robbery with open violence.

CRIME CHARGED.—1st count, highway robbery and theft of a gold chain valued at Rs. 256-8; 2nd count, assault and snatching of a gold chain valued at Rs. 256-8, from the person of the plaintiff, Kulloo Misser.

CRIME ESTABLISHED.—Assault and snatching of a gold chain valued at Rs. 256-8, from the person of the plaintiff Kulloo Misser.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 25th March, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty.*

This is the third prisoner brought to trial for this offence: Mooneea and Imrit were tried and convicted on the 10th April, and 11th of June, 1855, respectively; the prisoner Bolaki was named from the first by all the witnesses as one of the party who robbed Kulloo prosecutor on the night of the 11th March, 1855. The case is fully described in calendar No. 4, for March, 1855;

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3. The Court I am satisfied will no longer impute to me the confusion of ideas upon which they have commented, when I state that the insertion of the words, "On full legal proof" in the statement No. 6, was no act of mine, but that of my office clerk, nor was I aware of it until the receipt of your letter. I am no doubt responsible for every thing in the nature of a statement which emanates from this office, but especially in the earlier months of my incumbency here, the pressure of business obliged me to confide much of the detail of those voluminous statements to my Head Clerk, as I imagine is the common practice.

4. Upon reference to the file of statements No. 6, I cannot find that for the last ten years a single case has been entered in column 11, otherwise than as "on full legal proof," and thus a practice has grown up of entering all convictions in that manner, otherwise the words "circumstantial evidence" in my own remarks, and the corresponding expression of "*Zun i Ghalib*" in the law officer's *futwa* ought certainly to have led the person who prepared the statement to use the words "violent presumption."

5. I should observe that the "remarks" to be found in the last column of conviction statements, which are drawn up by me almost invariably before passing sentence, contain my exact sentiments and for these I am responsible to the fullest extent, while in regard to words or omissions in the periodical statements I respectfully hope that clerical or ministerial errors may sometimes be presumed.

1856.

July 14.

Case of BOLAKI.

witnesses Nos. 1, 2, 3, and 4, all swear distinctly to having recognised the prisoner at the time of his attack on prosecutor.

Prisoner in his defence says that on the 9th Assin 1911 Sumbut 1262 F. S. he went to the *Terrai* and took service with Soobah Dhitta, where he made gun-carriage wheels and afterwards managed the opium cultivation. He remained there between twelve and thirteen months then came to Mr. Macdonel, sub-deputy opium agent at Patna with a letter asking for 40,000 Rs. for the Soobah as advance for opium. It was on a Thursday about five months ago that he came to Mr. Macdonnel, he then heard that his property was attached on account of his absence and that he was suspected in this case, he therefore at once that same day gave himself up to the magistrate. He calls as witnesses the Nepal Soobah Dhitta and others of the same government but though written to, they refuse to come, neither will their government send them. The witnesses appearing for the defence Nos. 1, 7, 8, 9, 10, 11, 12 and 13, know very little of the matter, they generally prove that prisoner was occasionally employed in the Nepal Terrai, but beyond that and his not having been seen by them in Patna for some months prior to the robbery of Kulloo, they are totally ignorant of his movements or whereabouts. The letter received from Soobah Dhitta of Nepal, states that a person of the name of Bolaki, a carpenter by trade, came into his service on the 11th of Kartick 1911 Sumbut, and that a year afterwards he sent him with a letter to Doctor Macdonnel, sub-deputy opium agent, but this cannot be received in evidence, neither are such *kyfeeuts* from the Nepal officials always trustworthy.

The law officer's *futwa* convicts the prisoner on the charge of robbery with violence, in which I concur.

The prisoner is fully identified by four credible witnesses, the case was not one got up by the prosecutor, but first discovered and reported on by the police, who had some difficulty in persuading the prosecutor to come forward. The defence and attempt to establish an *alibi* are very weak, the prisoner has evidently considered his service in the Nepal Terrai as conveying certain immunities which might cover intermediate crimes by the interposition of an *alibi* such as that now offered. I place no credit in his defence and convicting him of assault and snatching a gold chain, as per the second count of the indictment being tantamount to robbery with open violence, sentence him to seven years' imprisonment with labor in irons in banishment (five years and two years in lieu of stripes.)

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) This appears to be the third prisoner convicted on this charge. He pleads an *alibi* to the purport that he was at the time of the robbery in service at Nepal; but the judge states that four credible eye-witnesses

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depose to his identity; and the statements of such witnesses as the prisoner produced in support of his defence, merely speak to his having taken service in Nepal during the last eighteen months; a circumstance which, if true, is quite compatible with a belief in the prisoner's guilt; as it does not necessarily follow that because he had service in Nepal he could not visit his home at Patna. We uphold the sentence passed on the prisoner; but the judge should have attended to the remarks of this Court, recorded in the appeal of Moonea, which pointed out to him that the offence amounts to robbery with open violence.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND GUDADHUR MUHAPATTER

versus

Midnapore.

BANCHARAM MYTEE (No. 2,) RAM DOSS (No. 3,) AND MUDHOOSOODUN MISSERY (No. 4.)

1856. July 14. Case of BANCHARAM MYTEE and others.

Prisoners in concurrence with the sessions judge acquitted of theft, &c. Their confessions being uncorroborated and discredited; and the circumstances improbable.

CRIME CHARGED.—1st. count, theft in having scaled the thatch of the barn of the prosecutor, Gudadhur Muhapatter, entered his house and dug up two brass *lotahs*, which contained rupees and gold mohurs to the value of Rupees 2,213-7-3, and carried them off; 2nd count, with having in their possession the stolen property of the above theft, knowing it to have been so acquired.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 7th May, 1856.

Remarks by the officiating sessions judge.—The *futwa* of the law officer acquits prisoner No. 4, Mudhoosoodun Missery, in this I concur; but it convicts the other two prisoners of the charges brought against them, from which finding I must dissent.

In regard to prisoner No. 4, it comes out in the defence of prisoner No. 2, that enmity is borne him by Kasee Doss Baboo, the talookdar of the village; and by the prosecutor towards one Hatoo Putlaik. This man is said to be respectable and though implicated in the confession of No. 2, has not been sent in by the police; with this preface, I dismiss the case of the prisoner No. 4, Mudhoosoodun Missery, who has been acquitted and released.

The circumstances of this case, as given by the prosecutor,

are briefly the following: prosecutor had buried two *goottees* filled with Co.'s Rupees 2000, and 10 gold mohurs in a shed in his granary yard which has an enclosing wall; on the 26th, he ascertained that they had not been disturbed; on the 27th, when he opened the lock of the door he found it had been fastened on the inside, so that he could not enter. He then got over the wall, and discovered that both *goottees* had been removed, and, as he avers, stolen.

The prisoners plead "*not guilty*." Bancharam, prisoner No. 2, was first apprehended by one Dhunnoo Perdhan on the suspicion of the prosecutor, by whom he had been employed in teaching his children, but had since taken service with Mudhoosoodun Missery, prisoner No. 4, of the same village. On his alleged confession, Dhunnoo Perdhan then arrested prisoner No. 4, and* detained them both in close custody in Kashee Baboo's house for a whole night and day at least; until the arrival of the darogah of police. Men were also despatched to apprehend Hatoo Putlaik aforesaid, and his servant, Ram Dass, prisoner No. 3.

* Wit. No. 27. Lukheenarain Doss.
" " 28, Kasheenath Doss.

These apprehensions were no doubt totally illegal, and, combined with other circumstances, throw grave suspicion on the story of the prosecutor.

Two days after the occurrence of the said theft, information was given by the prosecutor to the police. The darogah arrived, and between 8 and 9 o'clock P. M., took down the confessions of prisoners, Bancharam Mytee, No. 2, and Ram Dass, No. 3; the former of whom is said to have produced that night one of the stolen *lotahs*, and its contents from a tank belonging to Mudhoosoodun Missery, prisoner No. 4. The confessions of the prisoners are repeated by them before the magistrate. The prisoner No. 2, in his defence before this court, states that the whole case has been trumped up (as above hinted) from enmity to prisoner, No. 4, and to Hatoo Putlaik; and after detailing how witnesses, Nos. 27 and 28, and others, had forced him to confess, very naively adds, "I told the darogah all that they insisted on my doing." This expression is taken by the law officer as corroborative of his confession, I contend it cannot be justly so construed, but rather that it makes in favor of the prisoner's simple-mindedness.

It remains therefore to be considered, 1st, whether the alleged theft ever occurred; 2nd, whether the production of the property by Bancharam Mytee, prisoner No. 2, is indubitably established. 3rd, whether the confessions are trustworthy and true.

In regard to the first point, prosecutor alone can declare it, he alone knows whether he buried the money in his granary, as he says he did. His brother, Sudanund Missery, No. 21¼,

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cited by the sessions judge, at first stated in detail that his brother had deposited the money as stated, but on cross-examination, admits he was not personally cognizant of the fact, merely heard it from the prosecutor after the occurrence of the theft: that his brother had two or three thousand rupees; had seen them at his shop at Panchro, half *coss* from his house; as also at his house; that the prosecutor had lately spent a thousand rupees on a tank. Witnesses* to the *sooruthal*, depose to having seen signs as if two *goottees* had been taken out of the ground, but can say nothing further either as to their contents, or otherwise. It is scarcely to be believed that a mohajan in business should bury so large a sum of good and current coins in his granary when he had a shop and house to keep it in. Had they been old and impassable, it might have been understood.

* Wit. No. 5, Nuboo Mytee.
,, ,, 6, Doonderam Doss.
,, ,, 7, Ramchurn Missery.

In regard to the recovery of the property, there is great difference and contradictions as to the position of the tank, in which one of the stolen *goottees* is said to have been found. Prisoner and Dhunnoo Perdhan stoutly maintained that it was inaccessible to others without the knowledge of prisoner No. 4; but the evidence of others, as well as that of Dhunno Perdhan, shows the contrary, and that between the tank and prisoner No. 4's house, a betelnut garden and a public road intervene, the distance is variously stated from ten or twelve hands to one begah. It is very essential in considering this point to bear in mind that the prisoners, Nos. 2 and 4, were kept a whole night and day in close custody, shut up in separate rooms in the *baitokkhana* of Lukheenarain Dass, witness No. 27, and Kashee Dass, witness No. 28, and were taken out only on the arrival of the darogah, to be delivered over to him. The search was made by torch-light; and the witnesses to it do not agree as to the state of the *goottee* when taken up by prisoner No. 2; one says the mouth was covered with hemp, the other with leaves and mud. Both swear that its contents were not then counted, but that the *goottee* was conveyed not by the prisoner, but, as witness No. 1, Dhunnoo Perdhan, says by the prosecutor to the darogah's lodging or cutcherry in prosecutor's house. This was a distance of sixty beegahs or nearly a mile. Prosecutor and his brother, Sudanund, witness No. 21¼, admit that the former carried it the last half of the road. Thus plenty of opportunity was afforded for any tricks to be played. The evidence of witnesses to the recognition† is such and their manner such, that I can place no reliance on it. These irregularities and discrepancies preclude belief in the honest finding of the property. The evidence is insufficient to convict the prisoner Bancharam, of its guilty receipt.

† Wit. No. 20, Ghunnee Naik,
,, ,, 13, Haroo Singh.

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The third point proposed for consideration is whether the confessions are true. Both prisoners declare their first confessions were extorted; this, however, is contradicted by the witnesses, before whom they were taken. It is scarcely to be expected that such a plea can be supported by any witnesses. A prisoner's unwillingness is not permitted to ooze out to those who are sent in as witnesses to confirm a confession. There is, however, no doubt that the confessions were fairly taken down before the magistrate, and to the best of his belief, were voluntarily made. Still it remains to be seen if they are true and honest confessions. It is well known with what circumspection a confession should be received in this country, and redoubled caution should be exercised when from the features of the case, a doubt is rather thrown on its veracity, or a suspicion on its voluntariness.

These confessions bear internal evidence that they are wanting in veracity.

No mention is made by the confessing prisoners that they had taken any precaution to guard against surprise by shutting the door on the inside, as prosecutor would have it supposed.

Prisoner No. 2, is said to have admitted that he kept the key; but prosecutor nowhere says this. Witness No. 20, says it was with prosecutor; witness No. 18, that the prisoner kept it. The sudden resolution at which, the confession says, prisoner No. 4 arrived, of committing the robbery, that night was so hurried and immature that it is most improbable. The magistrate must have thought the same, for lower down, the confession states that Mudhoo had made enquiries before, and had consulted Hatoo Putlaik as to committing the theft. This, however, is flatly contradicted by the introduction of the confession. "On the 25th or 26th of Poos, &c. i. e., the very day of the theft." Again, when prisoner No. 2, states that he stood at Rugoo Perdhan's house and prisoners Nos. 3 and 4, took the active part in the theft, the question reasonably arises why should the party, who knew where the property was buried, have been allowed to stand aloof; and on seeking for the explanation none is to be found. Both prisoners giving diametrically opposite accounts. Again, No. 2, says Mudhoosoodun Missery wished to put off giving him any share in the booty; yet most inexplicably allows, that Mudhoo pointed out to him where he had concealed the money. Further, the *thakoorbaree* and small house adjoining it, in which the prisoner, Bancharam, No. 2, says he was beaten until he confessed, is situated* as he describes it, close to where he was confined a whole night and day; within the homestead or *baree* of Lukheenarain and Kalee Dass, the talookdars.

* Wit. No. 27, Lukheenarain Dass.
,, ,, 28, Kasheenath Dass.

I have before stated that there was nothing to shew that a

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theft had occurred, except the statement of the prosecutor, whose truthfulness is seriously brought into question. He first swore that the prisoner took the *gootlee* from the tank to the darogah's temporary cutcherry, he afterwards admits that he himself took it the last half of the road.

While he was being re-examined on this point, his vakeel left the court after he had given a reply in the negative to a question of one of the prisoners, viz. "Whether his brother did not carry the *gootee?*" On this, prisoner No. 4, vociferated that Sudanund was present, and that the vakeel had gone out to tutor him. The law officer then asked the prosecutor whether his brother was really here, he distinctly denied this; and had scarcely done speaking when his brother was brought into court. This had no sooner been done than I observed the prosecutor with his hands before his mouth, apparently instructing the said Sudanund, for which he was rebuked by me. Such conduct entirely shakes my trust in his veracity, on which alone depends the fact of the theft. The whole case is suspicious, and I would acquit the prisoners.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) There is no direct proof of the perpetration of the theft, except what is said to have been stated by the prisoners themselves in their confessions. These confessions are discredited by the sessions judge; and, as far as we can see, there is no independent evidence on the record to support any part of them

We agree with the sessions judge, that the case is open to suspicion, and that it would not be safe to convict on the evidence in the face of so many improbabilities. We accordingly direct that the prisoners be released.

PRESENT

H. T. RAIKES, Esq., *Judge* AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BOODHUN PASSEE (No. 9,) CHAYTHA MULLAH (No. 10,) DEEPOO MULLAH (No. 11,) AND NUCK-CHED DOSADH (No. 12.)

Patna.

1856.

July 14.

Case of BOODHUN PASSEE and others.

Appeal rejected.

CRIME CHARGED.—No. 9, perjury, in having on the 22nd February, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before *F. A. Vincent, Esq.*, deputy magistrate of Barh, "That hearing some boys cry out, I went and saw my brother *Jeetun's* dead body lying with its face towards the ground with marks of blows by *lattees* on several parts of his body. I first heard from others and then from *Chaytha Mullah*, that he and deceased were pulling peas from the field of *Sheochurn* who first struck *Chaytha* with a *lattee*, *Chaytha* then ran away, when *Sheochurn Bhartee*, *Goorchurn Bhartee* and *Boodhoo Roy*, struck my brother, *Jeetun*, with *lattees* and *paynas*, causing my brother's death;" and in having on the 25th of March 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before *R. N. Farquharson, Esq.* the sessions judge of Patna, "that my brother, *Jeetun*, went to Barh to beg, and I heard from some travellers, that when he was returning thence, having crossed the river *Cheerya*, he stumbled and fell down dead." Such statements being contradictory to each other on points material to the issue of the case.

No. 10, Perjury, in having, on the 22nd February, 1856, deposed under a solemn declaration taken instead of an oath before *F. A. Vincent, Esq.*, deputy magistrate of Barh, "that as I was returning from Barh, and approaching the fields of *Seochurn Bhartee*, *Goorchurn Bhartee*, and *Boodhoo Roy* in the evening, I saw *Jeetun Passee* plucking up some peas, I joined him also in pulling them up, on our return when we reached the river, I observed that *Seochurn Bhartee*, *Goorchurn Bhartee*, and *Boodhoo Roy*, were pursuing us. *Seochurn Bhartee* approaching close to me, first struck me with a *lattee* on my left shoulder and then leaving me commenced beating *Jeetun* with a *lattee*, who I heard died on the following morning. I escaped, but saw at the same time that *Seochurn* had a *lattee* and *Goorchurn* and *Boodhoo Roy*, had *paynas* in their hands," and in having again on the 27th of March, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before

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R. N. Farquharson, Esq., the sessions judge of Patna, "that I saw nothing, but heard that *Jeetun*, the brother of Boodhun, a cripple, was returning from Barh and that he fell down and died." Such statements being contradictory to each other on points material to the issue of the case.

No. 11, perjury, in having on the 29th of February, 1856, deposed, under a solemn declaration taken instead of an oath before *F. A. Vincent, Esq.*, deputy magistrate of Barh, that "I saw Chaytha Mullah from a distance of two *bans* coming across the river with some handsful of peas, and saw him run away, on being beaten with a *lattee* by *Seochurn Bhartee*, that *Jeetun Passee*, who was coming behind the said *Chaytha*, was then so severely beaten by *Sheochurn Bhartee*, *Goorchurn Bhartee* and *Boodhoo Roy*, that he fell on the ground," and in having again, on the 27th March 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before *R. N. Farquharson, Esq.*, sessions judge of Patna, that "I did not witness the occurrence but heard from neighbours that *Jeetun Passee* was returning from Barh, and while passing across the river that he stumbled and fell down dead." Such statements being contradictory to each other on points material to the issue of the case.

No. 12, perjury in having, on the 1st March, 1856, deposed, under a solemn declaration taken instead of an oath before *F. A. Vincent, Esq.*, deputy magistrate of Barh, that "about half *puhur* at night, hearing an outcry, I proceeded to the river and found *Chaytha Mullah* with some handsfull of peas and *Jeetun Passee* coming behind him, *Goorchurn Bhartee*, *Seochurn Bhartee* and *Boodhoo Roy* were pursuing them, and *Seochurn Bhartee* struck a blow on the shoulder of *Chaytha Mullah*, who then made his escape, they then continued beating *Jeetun Passee* with blows and *paynas*, till he fell on the ground, observing this from a distance of two or three *bans*, I was much afraid and ran to my house," and in having again on the 27th March, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before *R. N. Farquharson, Esq.*, sessions judge of Patna, that "I saw nothing but heard that *Jeetun* was returning from Barh and while passing across the river that he stumbled and fell down dead." Such statements being contradictory to each other on points material to the issue of the case.

Crime Established.—As crime charged.

Committing Officer.—Mr. F. A. Vincent, deputy magistrate of Barh.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 22nd April, 1856.

Remarks by the sessions judge.—Prisoners plead *not guilty*.

Boodhun, prisoner No. 9, was prosecutor and the other pri-

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soners, eye-witnesses in a case where certain Gosain landholders were accused of the murder of one Jeetun Passee. The statements of prisoners on oath, before the deputy magistrate of Barh, were full and particular, as well as conclusive, as to the guilt of those charged. On their appearance before this court, however, one and all denied on oath the depositions they had sworn to before the deputy magistrate, substituting another highly improbable story for the plain facts there deposed to. They were warned of the consequences of such wilful falsehood, but persisted in swearing to the truth of the facts deposed to before this court, which entirely exculpated those accused who were consequently acquitted, and the prisoners from Nos. 9 to 12, inclusive, ordered by the sessions court to be committed for perjury on their own words as sworn to in the different courts.

The evidence of witnesses Nos. 1, 2, 3 and 4, now before the court proves the delivery of the several evidences before the magistrate and the judge, as set forth in the calendar of commitment. It proves also to my entire satisfaction that the evidence before the deputy magistrate of Barh was given willingly and unprompted.

The prisoners in their defence adhere to the story before this court being the true one, and allege force and threats as having compelled that given at Barh. They call no witnesses to corroborate their statements.

The law officer gives in a *futwa* of guilty, in which I concur, there can be no doubt as to the directly opposite nature of the two evidences, that before the deputy magistrate of Barh and that before this court, neither can there be any doubt as to their being contradictory to each other on points material to the issue of the case. I convict prisoners Boodhun Passee, No. 9, Chaytha Mullah, No. 10, Deepoo Mullah, No. 11, and Nuckched Dosadh, No. 12, of perjury, as charged against them in the calendar, and sentence them to three years' imprisonment with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The prisoners, in their petition of appeal, have urged the same defence made by them on trial; viz. that they were induced by threats of ill-treatment to give false depositions before the deputy magistrate.

There is no reason to suppose this was the case. We therefore reject their appeal, and confirm the sentence passed upon them.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

KRIST BANKA (No. 2,) GUNGA POONDUREE (No. 3,) AND SHEIKH BEERAM MUNDLE (No. 4.)

Dinagepore.

1856.

July 14.

Case of KRIST BANKA and others.

Prisoners, convicted by lower court of culpable homicide, acquitted, the evidence being disbelieved.

CRIME CHARGED.—1st count, wilful murder of Rama Tettan; 2nd count, accessaryship to the murder of Rama Tettan.

CRIME ESTABLISHED.—Nos. 2, 3 and 4, culpable homicide of Rama Tettan.

Committing Officer.—Mr. E. C. Craster, officiating joint-magistrate of Maldah.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 24th January, 1856.

Remarks by the sessions judge.—The prisoners were charged with the wilful murder of "Rama Tettan." There was a compact among the ryots of sundry villages not to pay rent to the Putneedar, and the prisoners determined to punish the deceased for having paid contrary to agreement. On the pretence of purchasing mulberry leaves from him, they got hold of him, beat him severely, and on seeing blood oozing from his mouth, and that he could not drink water, they ran away. The civil assistant surgeon stated in his certificate that "there were several contused marks externally over the region of the spleen and internally much effusion of blood from rupture of the spleen, the brain highly conjested and great extravasation of blood over it and that, in his opinion, death was caused by the injuries which produced the above appearances." The case was clearly proved and the prisoners' attempt to establish an *alibi* was a failure.

The *futwa* of the law officer convicted the prisoners of culpable homicide and I concurred.

Sentence passed by the lower court.—Nos. 2, 3 and 4, each to be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The evidence of witnesses Nos. 1 to 4, entered in the calendar as having witnessed the attack on the deceased, we consider to be wholly untrustworthy. The first statement made at the thannah, on the day of the occurrence, by Jogobundoo and Shama, sons of the deceased, was that they had gone in company with their father to the mulberry field, when he was set upon by prisoners Nos. 2, 3 and 5, and struck down; that on Joya Poonderee with ten others

having come up, the assailants fled, after which the deceased was carried home in a moribund state and died. In either of their statements they at first make no mention of the presence of the witnesses Nos. 1 to 4, though Shama in an unconnected manner, at the close of his deposition, stated that Nos. 1 and 2, were standing at some distance, no mention whatever, is made of Nos. 3 and 4. None of the several persons who were first named as having come up, when the deceased was struck down, have been forwarded by the darogah as witnesses; nor has the evidence of Shama or Jogobundhoo, the sons of the deceased, been taken. It is clear to us that the four witnesses, two of whom were the peadahs of the putneedar, with whom the accused were at variance, have been supplied in place of the parties first named by the sons, and that none of these four were really present at the time. It is also to be remarked that the prisoner Sheikh Beeram Mundle of the village was not named in any of the statements first made to the police. Under these circumstances, discrediting the evidence adduced, we direct that the prisoners be released.

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Case of KRIST BANKA and others.

PRESENT:

H. T. RAIKES, ESQ., *Judge* AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND THACOORPERSHAD

versus

KEERUT CHUND.

Patna.

1856.

July 15.

Case of KEERUT CHUND.

Embezzlement, &c. Conviction and sentence by lower court confirmed.

CRIME CHARGED.—Embezzlement under Act XIII. of 1850, of Rs. 1250, the property of Thacoorpershad, prosecutor, being his commission for the years 1852-53, and having been entrusted to Keerut Chund prisoner, in his capacity of treasurer to the Patna sub-deputy opium agency, to hold in trust for Thacoorpershad in part of certain security demanded from him by his official superior. The said sum of Rs. 1250, having been drawn from the Government treasury by Keerut Chund under a warrant No. 373, dated the 25th of July, 1853, for the use of Thacoorpershad, and fraudulently made away with by Keerut Chund contrary to his duty, in behalf of the trust reposed in him.

CRIME ESTABLISHED.—Embezzlement of Rs. 1250, the property of Thacoorpershad, entrusted to the prisoner in virtue of his office as treasurer of the sub-deputy opium agency.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

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Case of KEERUT CHUND.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 28th March, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty.*

This case has been tried twice before. The first trial was quashed because the prisoner had been charged with embezzling Government money, while that in question was proved to belong to an individual. The second failure arose from there being no specification in the charge of the nature and purpose of the trust as required by Section 13, Act XIII. of 1850. I have now retried the case on a newly constructed charge and re-examined the witnesses for the prosecution.

It is clearly elicited in evidence that the prisoner, when treasurer of the sub-deputy opium agent, had, in the course of his duty as such, charge of Rs. 1250, belonging to Thacoorpershad Sheristadar, which, when shortly afterwards his office was abolished, he failed to produce. It is proved that this money was in prisoner's hands in trust for Thacoorpershad from the 25th of July, 1853, and the loss finally discovered on or about the 13th of September following, when prisoner from some change in the office establishment had to make over charge of his treasure chest to his successor, prisoner did not make over charge in the regular way, but absented himself from office, and when his keys were procured from his wife through his brother Gungaram, and the box opened in the presence of the sub-deputy opium agent Mr. King, witness No. 1, Thacoorpershad's money was not forthcoming, and prisoner did not again appear till apprehended by the police. In fact he absconded, which forms one of the strongest grounds of proof against him. The warrant for the embezzled money is not found, but there is evidence to prove that those of the omla who had received any portion of its amount had signed their receipts on it, and all depose to the *serishtadar's* signature not being on that paper.

Prisoner's defence is, that he paid the money to Thacoorpershad, and refers to his former defence and the depositions of his witnesses on his former trials, Hunoman Singh and Bhyro Singh, Deonarain Loll, Meetoo Beharee, Buhoree Loll, Jugmohun, Radhe Kooshee Chund.

This defence and these witnesses endeavour to prove that there were some private dealings between prisoner and Thacoorpershad, and that the money had been accounted for. The counsel for the prisoner urge two points: first, that this case having been once disposed of, prisoner cannot be again arraigned for the same offence. Secondly, that prisoner is not a servant of Thacoorpershad, neither did Thacoorpershad entrust the money to his hands. Prisoner's defence is utterly worthless. The evidence of the witnesses which was again read in court and ordered to be incorporated with the record of his trial is

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Case of KEERUT CHUND.

quite as much so. The offence has never been before charged in its present form, neither was any final order of release ever passed on it. The second plea of prisoner's counsel cannot hold good, in the face of Sections 8 and 17 of Act XIII. of 1850.

The law officer gives a *futwa* of guilty, on violent presumption, in which I concur, and convicting Keerut Chund, prisoner, of embezzlement of 1250 Rs. the property of Thacoorpershad entrusted to him in virtue of his office as treasurer of the sub-deputy opium agency, sentence him to three years' imprisonment with labor without irons, or to pay a fine of 300 Rs. in lieu of labor, also to pay a fine of Rs. 1250 under Act XVI. of 1850, which is to be realized from the property of the prisoner and paid to Thacoorpershad, prosecutor. The prisoner has already suffered fourteen months' inprisonment pending final orders in his case. The original sentence was five years with labor in irons, but seeing the nature of the transaction and the punishment already inflicted, I am of opinion that the ends of justice will be satisfied with the diminished sentence above noted.

Remarks by the Nizamut Adawlut.— (Present: Messrs. H. T. Raikes and J. S. Torrens.) The case, on the former trials, was returned only on grounds of incorrectness of the indictment; but the evidence was then held, as now, fully to establish the act of embezzlement with which the prisoner is charged. There are no grounds whatever for interference with the order of the sessions court.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

PEEROO SHEIKH.

Nuddea.

1856.

July 15.

Case of PEEROO SHEIKH.

A wilful murder. The prisoner was sentenced capitally; the recommendation of the sessions judge to mitigation of sentence being not borne out by the facts.

CRIME CHARGED.—Wilful murder of Gourab Mosulmanee.

Committing Officer.—Mr. H. A. Cockerell, joint-magistrate of Nuddea.

Tried before Mr. R. M. Skinner, officiating sessions judge of Nuddea, on the 21st May, 1856.

Remarks by the officiating sessions judge.—Kaloo, the prisoner's son, a child of six or seven years of age, seeing his father cut his mother's throat and carry her to a hole near his house, shrieked, his cries attracted neighbours,* two (1 and 2,) of whom arrested the prisoner as he was running off at dawn, and handed him over to the chowkeedar.† They all saw the corpse and the recently inflicted wounds also, the blood-stained sickle with which the deed was committed and which is now in court.

The prisoner confessed the deed, 1stly to these persons‡ again to the darogah; also§ before the joint-magistrate and in this court.

The corpse has been identified|| as that of Gourab Mosulmanee, the wife of the prisoner.

The darogah proceeded to the spot very shortly after the occurrence and wrote a description of the wound, which is corroborated by attesting witnesses,¶ who have given evidence before me.

The body was forwarded to the sudder station. The civil assistant surgeon, witness No. 6, testifies that the wound was two inches deep and extended from the back to the front of the neck on the left side; and that such wound would cause death. But the corpse was in so decomposed a state, when it reached him

* Wit. No. 1, Shetab Sheikh.
,, ,, 2, Puran Sheikh.
,, ,, 9, Ratil Sheikh.
,, ,, 13, Moejooddee Sheik.

† Wit. No. 16, Aulum Chowkeedar.

‡ Wit. No. 7, Ramlochun Barit.
,, ,, 8, Nufur Shaha.
,, ,, 9, Ratil Sheikh.

§ ,, ,, 10, Gooroochurn Singh.
,, ,, 11, Chundermohun Bhadooree.

|| ,, ,, 13, Moejoodee Sheikh.
,, ,, 14, Buree Sheikh.
,, ,, 15, Jadoo Sheikh.
,, ,, 16, Aulum Chowkeedar.

¶ ,, ,, 3, Nufur Manjee.
,, ,, 4, Manick Sheikh.

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that he could not positively state whether the wound was inflicted before or immediately after death.

Witnesses* for the prosecution aver that one Edoo had a liasson with the deceased. The prisoner says he was dishonored by her misconduct, and that early one morning accompanied by his child Kaloo, he espied her *flagrante delicto*—but could not find out from her, who the adulterer, who ran off at his approach, was; words ensued and he cut her throat with the sickle.

* W. No. 1, Shetab Sheikh.
,, ,, 2, Puran Sheikh.
,, ,, 3, Nufur Manjee.

The law officer gives a verdict of "wilful murder," penalty "death."

I also convict the prisoner of the crime charged. The chief proof is his own confession. There was no eye-witness except the child. who is too young to be examined on oath. But the confession is borne out by the circumstantial evidence above described. That he had cause to consider his wife unfaithful, is also evident. The provocation was great.

Under the circumstances I would recommend that he be imprisoned with labor in irons for life.

Remarks by the Nizamut Adawlut.—(Present Messrs. H. T. Raikes and J. S. Torrens). The grounds of provocation, which the sessions judge has assumed to exist as a reason for mitigation of the punishment to which the *futwa* has declared the prisoner liable, we cannot find to be in any credible manner shown on the record. The evidence of the witness Myzoodeen proves that he detected the prisoner in the act of concealing the body of his murdered wife, just after the murder to which he confesses; at that time the prisoner alleged that he had killed her in consequence of the bad conduct and intrigues of which he imagined her to be guilty. In his confession, before the police, he merely alludes to the suspicions which he entertained of her misconduct, and that after upbraiding her he had murdered her within his house in the presence of his children: so also before the magistrate he likewise states that he had killed her, after having reproved her, owing to what he had heard from the neighbours of her, and owing to her having declined to leave the village, and go, as he had directed her to do, to the house of her parents; but never until his confession, to which he adhered before the sessions, did he make any mention of having, at the time of the occurrence of the murder or at any other time, discovered her in the act of adultery. It is quite evident from the late stage at which this statement was advanced, that it was an after-thought on part of the prisoner, to which he had recourse to avoid the consequences of his crime. In our opinion, there is no ground even for supposing that the woman was guilty, as the husband states he imagined her to have been; and in the absence, therefore, of any provocation, such

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as assumed by the judge to account for the wilful and deliberate murder committed by the prisoner, we see no reason why he should not suffer the full penalty of his crime; and sentence him to death accordingly.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT AND OMAMOEE CHASHANEE

versus

NUDIARCHAND PAUL (No. 4,) GUDADHUR PAUL ALIAS GODY PAUL (No. 5,) KASHEENAUTH PAUL (No. 6,) LOKENAUTH PAUL (No. 7,) BHEEKARY PAUL (No. 8,) MOOCHYRAM PAUL (No. 9,) CHOTO RAJ CHUNDER PAUL (No. 10,) ANNONTO RAM GHOSE (No. 11,) JUGGESSUR PAUL (No. 12,) AND BORO RAJ CHUNDER PAUL (No. 13.)

East-Burdwan.

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Order of the lower court upheld in a case of riot with culpable homicide, the plea of death from natural causes being disproved.

CRIME CHARGED.—1st count, culpable homicide of Juggessur Ghose, husband of the prosecutrix; 2nd count, riot attended with the culpable homicide of Juggessur Ghose; 3rd count, aiding and abetting in the aforesaid crime.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Juggessur Ghose.

Committing Officer.—Moulvee Gholam Ushruff, deputy magistrate of Boodbood.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East Burdwan, on the 27th March, 1856.

Remarks by the officiating sessions judge.—It is proved, by the evidence of the witnesses for the prosecution, that the prisoners and the deceased resided in the same village; that the former caught some fish in a tank said to be the property of the latter; that the deceased and his brother* came and demanded some of the fish; the prisoners refused to give any; the deceased snatched up a vessel, containing some, and ran away with it, the prisoners pursued him, by order of No. 4. Nos. 7 and 12, seized and upset him, and together with Nos. 5, 9, 11 and 13, trampled upon his neck, stomach and testicles, and also beat him with their fists; from the effects of which he became insensible, and soon after died. Prisoners, Nos. 6, 8 and 12, also followed in pursuit: they did not, however, attack the deceased, but proposed to destroy his house and with that intention pulled out some of the thatch.

* Witness, No. 1.

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Notice was immediately given to the police by witness No. 9, whose information varied but little from the account given above.

The body was examined by the sub-assistant surgeon,* located at the station, who is of opinion "that the man must have met his death by strangulation caused from pressure applied to the wind-pipe."

* Witness, No. 14.

The prisoners deny their guilt; Nos. 4 and 6 state that they were at a market half a mile distant from the scene of the occurrence at the time it is said to have taken place; No. 12 states that he was at the house of a neighbour at that time; and the remainder that they were at their own houses. With the exception of No. 4 they all declare that deceased died of disease. They allude vaguely to enmity existing between themselves and the witnesses for the prosecution, and No. 12 avers that he had an intrigue with a sister of witness No. 2.

Witnesses Nos. 17 and 18, have deposed in corroboration of prisoner No. 4's defence, specifying the date, the day and the time of day, at which they saw him at the market. But No. 17 when called upon to give the same particulars of the present time is totally unable to do so. The remaining witnesses do not prove any thing favorable to the prisoners.

The jury, three respectable and intelligent vakeels, without hesitation, found all the prisoners guilty of the riot; No. 4, of having commanded the assault, Nos. 5, 7, 9, 11, 12 and 13, of having committed it; and the remainder of having aided.

I concur with the verdict of the jury and convict all the prisoners on the second count.

It is most probable that the prisoners did not intend to kill the deceased, but it is obvious that the attack upon him was of a most brutal and savage description. The prisoners, who committed the assault, and he who instigated and commanded it are equally deserving of severe and exemplary punishment.

The remaining prisoners probably ran up with the intention of joining in the assault and were guilty of acts of violence, but their offence is by no means so serious as that of the others and a much lighter punishment will suffice.

It is therefore ordered that prisoners, Nos. 4, 5, 7, 9, 11, 12 and 13, be imprisoned for 7 years each with labor and irons and that prisoners, Nos. 6, 8 and 10, be imprisoned for 6 months each with labor; the labor to be remitted on payment of a fine of Rs. 25 each within 20 days.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The evidence of the eye witnesses goes to prove that the deceased's assailants pursued and threw him down, and then trampled upon his neck and body, striking

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him also with their fists, and that he died on the spot. The *post mortem* examination likewise shows that the injuries received by the deceased, and from the effects of which, death ensued, were of the nature described by the witnesses.

On this evidence, the judge has drawn his conclusions of the prisoners' guilt, and as he had the opportunity of observing and examining the witnesses, his opinion of their credibility must have great weight with us, especially as we see nothing in the surrounding circumstances to weigh against it.

Mr. Allen, for the prisoners, has urged that it is not likely that death sho ld have been the result of an unpremeditated assault, like the present one, and that the deceased is said to have been suffering from asthma; but we see nothing in this to raise an argument unfavourable to the finding of the court below, on such direct evidence as that which guided it; and we see therefore no ground for interference. The appeal is rejected.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND
J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND UNHITCH SINGH *versus* DILLAH GOWALLAH.

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The conviction of culpable homicide sustained, but considered that the sessions judge should have referred the case for Court's orders.

CRIME CHARGED.—1st count, wilful murder of Jogah, deceased; 2d count, culpable homicide of Jogah, deceased.

CRIME ESTABLISHED.—Culpable homicide of Jogah, deceased.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhagulpoor, on the 29th April, 1856.

Remarks by the officiating sessions judge.—This case was tried at Monghyr on the 26th and 29th April, 1856 by the aid of a jury* charged with, 1st count, wilful murder of Jogah Roy, deceased, and 2nd count, culpable homicide.

* Sukawutally. Goordyal Singh. Kallypershad.

The prisoner pleaded *not guilty.*

The prosecutor in this case was cousin to deceased, who went in Poos, on Saturday, to mouzah Kendee to demand 11 Rupees due from the prisioner, Dillah a Gowallah; on the following Monday about 4½ P. M., a Dosad brought prosecutor a letter from the Putwaree of Kendee, intimating that Jogah Roy had been severely assaulted, and was on the point of death, the same

information was conveyed in the letter. Prosecutor went to Kendee, which is five coss from his village, which he could not reach that evening, but on Tuesday at 8 A. M., he arrived, and found that the police had removed the deceased from the place where the assault occurred to the zemindar's cutcherry. The darogah asked prosecutor if he recognised the wounded person; he replied in the affirmative, stating he was his cousin, and had come alone to demand some money from the prisoner, and took with him Rupees 15 and a *lotah*. The deceased was then quite insensible and in a dying state, his head, chest and clothes were covered with blood. The prisoner was apprehended, but he denied all knowledge of the assault. The deceased, it appears, on arrival at Kendee showed the prisoner a bond, the amount of which was due by his mother, but Dillah's name not being inscribed on it, he denied all knowledge of the transaction, telling him, that his mother was dead. Jogah Roy being dissatisfied with this reply, proceeded with him to Domun Singh, whom they appointed sole arbitrator; the bond was perused, and it was ascertained, that one Bhuttun was one of the attesting witnesses who resided at Sundaha. The arbitrator suggested that should the witness acknowledge his signature, the bond was to be considered a valid deed, to which both parties consented. They left him and went to Bhuttun, who recognized his signature. The putwaree of that village, Sundaha, wrote a note, and gave it to deceased for the arbitrator, informing him of the result of the enquiry, the prisoner and deceased left them: after this, it was impossible to state what occurred, there being no eye-witnesses to the fact of the assault, the contesting parties, however, never found their way to the arbitrator's house, but some boys told Muhtab Loll, the *putwaree* of the Kendee village, that there was a person lying wounded at the *ahar* or embankment, a short distance outside the village in an insensible state, he, with Kehur Chowkeedar and Horil Gorait and others, went to the spot and found the deceased then alive, but insensible; Horil was dispatched to the thannah to give information, while Kehur was sent to the Chowrah Phandee. The *putwaree* in the presence of Fukkeerah and Sheodyal endeavoured to ascertain from the deceased where he resided, his father's name, and who had wounded him; he replied at Balgozur, and that he was son of Sham Singh, but to the last question he did not reply very distinctly, being exhausted. The *putwaree* in his statement before the darogah, declared that deceased named Surubjeet Kahar, a resident of Nudnawon as the culprit. On my asking him why he omitted this important portion in his deposition before this court, he replied that he had forgotten to mention it, and he was only one *haut* distance from deceased when he implicated Surubjeet. The darogah accordingly despatched Pokun Singh, Burkundaz, to apprehend Surubjeet, but he was

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absent, and had gone to purchase some bullocks. Neither the darogah nor the magistrate appear to have followed up this part of the enquiry, nor were Fukkeerah and Sheodyal summoned to ascertain what they knew on this point. I have directed the magistrate to cause their attendance with instructions that the darogah will explain why he left the investigation so incomplete. On the darogah's obtaining the information detailed regarding the validity of the bond, he questioned the prisoner as to what had become of it; at first, he declined to give a reply, but afterwards, in the presence of several persons, he promised to shew where he had placed it. Witnesses, Nos. 5, 6 and 7, with the darogah and prisoner, went to the spot, where Jogah Roy was found wounded, he then from under a large clod of earth, produced the bond, the *putwaree's* note, and a receipt, all written in Hindee, which were torn up into thirty-one pieces, the darogah afterwards pasted them into a fresh piece of paper. They are produced in court, and identified as those which the prisoner had hid in the ground. In his defence at the thannah, he merely admits having pointed out the abovenamed papers, but denies the assault, or taking Rs. 15, from deceased's person. His statement agrees in every particular with that of the prosecutrix up to the time that they left together, when he proceeds to say that as they returned at about a *russee* west of the spot where deceased was assaulted, prisoner went to obey the calls of nature, while deceased proceeded ahead, and subsequently he followed, when he saw that Hemraj Gowallah, Moher Gowallah, Kutowil, Goordyal, were beating him with *lattees;* prisoner concealed himself, and when the Gowallahs had left him wounded, he went near, and seeing deceased lying insensible on the ground, he took the bond and other papers out of his clothes, tore them in pieces, and concealed them; he then went home, and afterwards had an interview with Domun and Behadoor, at a Kullian, they enquired what had happened, he told them that the bond was pronounced to be correct, and that Jogah Roy had been killed by some Gowallahs of Kendee, they said nothing and he went home, (this is denied by Domun before this court), afterwards the police came and took him into custody. He could not assign a reason why the Gowallahs assaulted deceased, nor did he tell the circumstance to any one else, it was moonlight when he recognized the Gowallahs, and he blames himself for not informing the Kendee inhabitants. The police apprehended Kutohul, Hemraj and Mohur Gowallah, but they were released for want of sufficient proof against them by the magistrate.

Nos. 7 and 8 are named as witnesses in the calendar to this statement, but No. 8 declares he knows nothing about the matter, though his name is inscribed on it as a witness; as witnesses, Nos. 5 and 6, had also attested it, I questioned them.

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No. 5 states that the prisoner did not make this statement before him, he can write, and always signs his own name, and his signature is on the prisoner's defence, he was seated five or six *hauts* off, when the prisoner's statement was attested. The darogah called him and directed him to sign it, and forgets whether it was read over to him by the darogah. No. 6 declares the prisoner confessed before him to the police, that Jogah first hit him (the prisoner) and he then returned the blow, whereas the prisoner denies the assault at the thannah. As it is very evident that the darogah has most carelessly executed this important portion of the investigation, the officiating magistrate has been directed to call upon him for an explanation regarding this irregularity.

Witnesses, Nos. 9 and 10, attest prisoner's confession before magistrate taken on the 28th January, 1856, as being voluntary. When he stated that with Mehur, Kutohul, Goordyal, and Hemraj, Gowallahs, he assaulted Jogah Roy at the Kendee embankment, and took his mother's bond from him. There was a dispute, the deceased seized his hair, and he hit him with his fists, and also with a *lattee* on the back, but nothing else, while the others struck him about the head, they all went away and he died six days afterwards.

On the officiating magistrate questioning him on the 6th February, 1856, he admitted that the papers produced in court were those he took from deceased, and that the Gowallahs were his associates to his assistance, he wished to prevent them from injuring deceased, but deceased began to strike them, so they returned the blows.

The body was forwarded for the civil surgeon, Dr. Dukas' inspection, who was of opinion that deceased died from the effects of extensive bruises and cuts on the head, and fracture of skull, causing effusion of blood in the brain from a large artery which was ruptured, and deposed to that effect before the magistrate and this court.

As the *sooruthal* held by the police showed, that deceased had sustained fourteen injuries said to have been inflicted by a "*gerasah*," I questioned the civil assistant surgeon regarding them; he stated "that the soft parts of the head are hardly a few lines deep, and it is very possible that a hard stroke with a piece of wood may cause a cut resembling very much that inflicted with a knife or sword, and I am not prepared to say in this instance whether a knife or sword or any sharp instrument was used or not. The soft parts of the head were in several places completely cut through."

The prisoner pleads *not guilty* to the charge and in his defence, before this court, states that he neither assaulted deceased nor took the bond, he cannot tell from whence the darogah and moonshee got the thirty-one pieces of the bond, he, prisoner,

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searched, and could not find them, and forgets the name of the person who took them from under the clod, but he was a "*bunneah*" resident of Kendee, he did not owe a fraction to deceased, and his mother died two years ago, it is twelve years since he left Balgoozur, and through fear of the burkundaz, he confessed before the magistrate to striking deceased a blow on the back with a *lattee*.

Prisoner has no witness to depose on his behalf.

The jury acquit the prisoner on the first count, and return a verdict of guilty of culpable homicide. Notwithstanding the absence of eye-witnesses to the fact, I consider the latter charge is established against the prisoner, and from all the circumstances of the case, I am disposed to think the injuries which were numerous, as described by the civil assistant surgeon, were not inflicted single-handed, and that the main object was to destroy the bond so as to prevent the possibility of a civil action. I therefore concurred with the jury in the finding, and sentenced him to seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) Considering the admission of the prisoner, and the evidence as to his having left the house of Bheeton in company with deceased, there appear to be full grounds for his conviction of the crime charged. He admits that he was in dispute with the deceased about the payment of a bond held by the latter, and that before the arbitrator, both had agreed to abide by the assertion of Bheeton. Bheeton contrary to the expectations of prisoner, admitted that he had attested the bond, and prisoner and deceased were to return with his letter to the arbitrator Domun. Prisoner never made his appearance at Domun's. The day after they left Bheeton's house, the deceased was found wounded, and dying on the road. The *putwaree* of the village in which he was found, on learning that a stranger was lying in this condition, went to him and discovered from his own statements his name and residence. The *putwaree* stated before the darogah that the deceased also had declared to him that he had been wounded by one Surubjeet Singh of Nadwan. Before the magistrate he at first omitted to mention this, but on being questioned he said, yes, that the deceased had so stated to him in a faltering voice, but that he was not afterwards able to say more. In the mean time whilst investigations were going on in respect to Surubjeet, the mother of deceased appeared and stated the circumstance of his having gone to recover the debt on the bond from the prisoner. On this he was arrested, when he stated to the darogah that he was returning from Bheeton's in company with the deceased when the latter was set on by four Gowallahs, residents of Gondoree and beaten, and when lying wounded, he, prisoner, had gone and

taken from him the bond, torn it up, and hid it under clods of earth in the field. He was taken there, when he produced the torn portions of the bond, which were put together, and proved to be that which the deceased held against him. Domun Singh states positively that the prisoner never had returned to him from Bheeton. Before the magistrate the prisoner admits that he had struck the deceased one blow. The *putwaree's* statement as to what the deceased had said to him, as to his having been beaten by Surubjeet, is accounted for by the dying state in which the deceased was at the time; and it appears clear from all circumstances of the case that the *putwaree* must have misunderstood, what deceased had said to him; and having the prisoner's own acknowledgments before the magistrate as above stated, we see no reason to interfere with the sentence, but we think that, under all the circumstances, the officiating sessions judge should have referred the case for the Court's orders.

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PRESENT:

B. J. COLVIN, ESQ., *Judge* AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND SHIBCHUNDER RAHA

versus

SHEIKH ZUKEE (No. 4,) SHEIKH KHOOJA (No. 5,) AMBER ALEE (No. 6, APPELLANT,) LALL MAHOMED (No. 7,) AND SHUROOP SHAH (No. 8.)

Sylhet.

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Appeal rejected, as petitioner's guilt was apparent from his own statement.

CRIME CHARGED.—1st count, Nos. 4 to 7, burglary in the house of the prosecutor and theft of property to the value of Co.'s Rs. 305-12-6; 2nd count, No. 8, knowingly having in his possession the property obtained by the burglary.

CRIME ESTABLISHED.—Nos. 4 and 5, burglary; Nos. 6 and 7, being accomplices in the burglary and theft; No. 8, knowingly having in possession the stolen property.

Committing Officer.—Mr. C. Mackay, principal sudder ameen of Sylhet, with magisterial powers.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 30th April, 1856.

Remarks by the officiating sessions judge.—The circumstances connected with this case of burglary are as follows.

On the 16th December, 1855, corresponding with the 2nd of Poos, 1262, B. S., Joogul Singh, Chowkeedar, reported at the thannah of Sunkerpossah, that the house of the prosecutor, Sheebchurn Shaw, had been burglariously entered on the night

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of 12th idem, and property to the value of Co.'s Rs. 305-12-6, stolen therefrom, but that the prosecutor suspected no body in particular of committing the burglary.

The darogah reported, on the 8th of January, that the burglary had taken place, but that the prosecutor had not charged any one with the crime. The darogah was ordered to make a re-investigation, and whilst so doing, he discovered that prisoners, Nos. 6 and 7, (who are apprehended in a case of theft, in which Shamramdeb was prosecutor) had sold certain gold and silver ornaments, some of which they melted and made other ornaments, and that Shuroop Shah, prisoner No. 8, had purchased from Zukee, a bad character, a pair of silver *bahoo*: suspicion then fell on prisoners, Nos. 6, 7, 4 and 8, and the prosecutor lodged a complaint.

Prisoner, No. 4, before the darogah, states that on the night of the occurrence, Shorun Singh, accompanied by prisoners, Nos. 5, 6 and 7, took him (prisoner No. 4,) to the prosecutor's house, that he and Shorun Singh committed the burglary, entered the house, and brought out the stolen property, which was divided among them, he (prisoner No. 4,) received as his share a pair of silver *bahoo*, which he sold to Shuroop Shah, prisoner No. 8, and adds that all the articles, viz. a *tusla*, *thal*, *lota*, &c., &c., pointed out by prisoner, No. 8, belonged to the prosecutor, and were sold by him (prisoner No. 4,) to prisoner No. 8.

Prisoner No. 5, confessed that he accompanied the other prisoners to commit the burglary, and the property obtained thereby was divided among them, he pointed out the articles, Nos. 10 to 14, which he had concealed in Kalachand Shaw's tank, and also produced the articles, Nos. 15 and 16, from the house of one Janbux, where she had concealed them.

Prisoner, No. 6, pleaded that he did not commit the burglary, that on the night of the occurrence he went to the house of Laloo, prisoner No. 7, and saw the latter with prisoners Nos. 4 and 5, sitting by the fireside, and distributing the stolen property; that on seeing him, they extinguished (the fire, and on Khooja's (prisoner No. 5,) attempting to go, he, prisoner No. 6, arrested him, that Khooja called out, on which Zukee (prisoner No. 4,) came and gave him (prisoner No. 6,) a golden *pechoa*, four annas of which he sold to one Baseer for Rs. 3, and with another four annas he had a *nuth* or nose-ring made, the remainder he kept. The articles, Nos. 7 and 8, were produced by the wife of the prisoner and No. 9. by Baseer, who had purchased it.

Prisoner, No. 7, states that one night, two or three days after the burglary, prisoners Nos. 4 and 5, came to his house with the stolen property, and requested him to have the property sold for them: and as he could not procure other purchasers, he,

prisoner No. 7, purchased a *looluck* weighing ten annas gold, a golden *chapkullee* and a silver *panbatta* at half their value, with which he made a *nuth*, or nose-ring, and other ornaments; he also stated that he received as his share a *kulsee* of rice, property numbered 1 to 3 was found in a *jhapee* in the prisoner's house, No. 9, viz., a *kulsee* of rice was produced by the prisoner's mother on its being pointed out by prisoners Nos. 5 and 7.

Shuroop Shah, prisoner No. 8 confesses that he purchased from Zukee (prisoner No. 4,) a silver *bahoo* for Rs. 22-6, and sold it again for Rs. 25; that two days after the sale, the said Zukee came to his (prisoner's) house with a bag containing a *thal*, *lotah*, and *tusla*, &c., of which he took charge, and sold some of the articles to Chundermonee and Kallachand; the articles, numbered 17 to 22, were produced by the prisoner from a place in the vicinity of one Bany's house.

The prisoners' confessions before the magistrate corroborated more or less their admissions to the police: these confessions have been verified by the evidence of the witnesses in the calendar; the particulars of the commission of the burglary, the character of the prisoners, the discovery of the stolen property and the fact that the property belonged to the prosecutor were satisfactorily proved before this court.

The prisoners, although they pleaded *not guilty* before this court, yet the crime charged against them is clearly proved: in fact, the prisoners themselves, more or less, implicate each other; the witnesses cited by the prisoner No. 8, state nothing in support of the prisoners' defence.

As I find that prisoners Nos. 4 and 5, have been previously convicted, the former in two cases, viz. in one of burglary, and in another of being a bad character, and the latter of being a bad character, I consider they are deserving of a severe sentence than the other prisoners, and, concurring in the verdict of the jury as to the guilt of the prisoners of the charges brought against them, I sentence them as below.

Property to the value of Rs. 118-15, was recovered; there is not, however, such satisfactory proof on record as to the prosecutor having been robbed of the entire amount stated, such as would entitle him to a refund of the balance under Act XVI. of 1850.

Sentence passed by the lower court.—No. 4, to be imprisoned for seven years; No. 5 for five; Nos. 6 and 7 for four, and No. 8, for three years, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) There is no reason to interfere with this conviction.

It is evident from the prisoner's own statement that he knowingly shared in the spoils of burglary, and his associates implicate him as an accomplice. We reject the appeal.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ. *Officiating Judge.*

GOVERNMENT AND SUGOON DOSS
versus
ROTOY (No. 1,) LALLA ALIAS SUTOOA (No. 2,) AND NARAIN (No. 3.)

Chota Nagpore.

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Case of ROTOY and two others Conviction affirmed.

CRIME CHARGED.—Prisoner No. 1, perjury, in having on the 9th April, 1856, deposed under a solemn declaration taken instead of an oath before the first grade moonsiff of Kishenpore, Lohardaga division, that his name was Hindoo, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 2, perjury, in having on the 9th April, 1856, deposed, under a solemn declaration taken instead of an oath, before the 1st grade moonsiff of Kishenpore, Lohardaga division, that his name was Sutooa, son of Goonga, caste Moondaree, such deposition being false, and being intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 3, subornation of the above perjuries.

CRIME ESTABLISHED.—Prisoners Nos. 1 and 2, with perjury, and prisoner No. 3, with subornation of perjury.

Committing Officer.—Captain W. H. Oakes, principal assistant commissioner of the Lohardaga division.

Tried before Major J. Hannyngton, deputy commissioner of Chota-Nagpore on the 11th June, 1856.

Remarks by the deputy commissioner.—It is clearly proved, by the evidence in this case, that the prisoner Rotoy, on his oath, stated falsely that his name was Hindoo, and that the prisoner Lalla *alias* Sutooa, on his oath stated falsely that he was of the Moondaree caste; and that the prisoner Narain induced the abovenamed prisoners to personate Hindoo Moondaree and Sutooa Moondaree, and to make on oath the said false statements. Such statements being on points material to the issue of the case.

The jury find the prisoners guilty as charged, and concurring in this verdict, I sentence the prisoners Rotoy Moondaree, Lalla Mahelly, and Narain Moondaree, to be imprisoned for four years each, with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The prisoners virtually acknowledge their guilt, even in their petition of appeal, but add that they were not aware they would be punished. We see no reason to interfere.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

OOZEER KHAN (No. 3,) FALLOO ALIAS FELLANYAH (No. 4,) RAMZAUN (No. 5,) NOWAJ (No. 6,) KEYAMUDDY (No. 7,) AND EMAMBUX (No. 3.)

Tipperah.

1856.

July 19.

Case of OOZEER KHAN and others.

Prisoners convicted in a case of affray attended with murder, &c.

CRIME CHARGED.—Affray, in which Sona Gazee was killed, and Rohomut and Brijolaul were wounded.

Committing Officer.—Mr. R. Abercrombie, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 17th April, 1856.

Remarks by the sessions judge.—The necessity for this reference arises from a difference of opinion between the Mahomedan law officer and myself, regarding the guilt of the prisoner, Oozeer Khan, whom I would convict and the Mooftee acquit.

The trial is supplemental to one held by me on the 29th February, 1856, and reported in my monthly abstract of convictions, without reference to the sudder Court in the following terms.

"Ameena Bebee and Kaim Khan are proprietors of two independent or *kharija talooks* in Kismut Sutrokundul, pergunnah Seryle, a very turbulent part of the district; Kaim Khan appears to have attached and cut the crops of a ryot on Ameena Bebee's estate, named Emambux, but to have effected the attachment in the name of a supposititious under-farmer Mohurrum (in reality only a ryot) and of a fictitious defaulter named Ameer. In reprisal, Asadoolla who is Ameena Bebee's naib and chief man of business, attached the crops of a ryot on Kaim Khan's estate named Sadoolla, setting up, as Kaim Khan had done before him, a fictitious claimant and defaulter. In proceeding to carry out this attachment by cutting and removing Sadoolla's crops, Asadoolla and the body of men who accompanied him (stated by the darogah to amount in number to two hundred, or two hundred and fifty, but more probably to fifty or sixty) were met and opposed by Kaim Khan, who had summoned together an equal number of partisans by beat of drum. In the affray which ensued, Sona Gazee, a part-proprietor of Sadoolla's crop was killed by a thrust with a *rye bâs*, and Brijolaul and Rohomut (prisoners, Nos. 23 and 14,) were wounded, the former losing his little finger, and Rohomut being slightly wounded in the side.

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"The case appears to have been taken up by the police in the first instance as one of riot, confined to Asadoolla and his retainers; Kaim Khan having on the same day laid an information to that effect sending in at the same time the corpse of Sona Gazee. Asadoolla who was apprehended on the 30th idem, gave on that day *his* version of the affair, which converted the supposed riot into a case of mutual affray. On the following day, i. e. on the 1st December, Kaim Khan presented a supplemental plaint making the parties, whom Asadoolla, the day before, had named as his witnesses, defendants, on the plea that he had forgotten them when making his first deposition.

"Asadoolla accounted to the darogah for his silence from the 25th to the 30th by stating that Kaim Khan had kept him in close confinement during the intervening days. Before the magistrate he dropped this plea, but adopted it again in the sessions court. This inconsistency, coupled with the absence of all proof of his having been under restraint, precludes acceptance of this mode of accounting for his silence. I believe the truth to be, that he was fully conscious of the serious consequences to which the breach of the law, committed under his orders, had exposed him, and was not anxious to hasten them by making his appearance at the thannah a moment earlier than was necessary even to implicate his opponents.

"That the affray was a mutual one seems to me to admit of no doubt. The evidence for the prosecution is derived in four instances from witnesses of unusual respectability, three of whom are independent talookdars, and the fourth a merchant. Two of these witnesses appear to be distantly connected with Ameena Bebee, but their evidence showed no tendency whatever to lessen the criminality of her naib and ryots at the expense of their opponent. The remaining four witnesses if of lower grade than those to whom I have alluded, deposed to what they saw and knew, in a manner to impress me with a belief that they were speaking truly. Looking back to Peer Mahomed's first petition to the police, in which, as I have already remarked, the case was described as one of simple riot, I find the names of two witnesses, Kallachand Lalla (No. 126,) and Shib Dutt (No. 127,) mentioned as qualified to prove the charge. Looking further into the record, I find that these witnesses were examined by the magistrate, and that their depositions went clearly to show that the affray was two-sided.

"The wounded man Brijolaul Singh prisoner (No. 23,) stated to the darogah and to the magistrate that he had been wounded by his employer Asadoolla (prisoner No. 24,) for refusing to assault Sadoolla (prisoner No. 17,) and others. Brijolaul Singh (prisoner No. 23,) appears to have been one of six *lattials* employed by Asadoolla (prisoner No. 24,) to aid him in this act of violence, and he was perhaps induced to make the statement

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of his having been wounded by his own master, for refusing to be guilty of violence by the necessity of accounting for his wound, (he had lost a finger) and at the same time, if possible of justifying himself. Before me he stated that he did not know who had wounded him, but had heard the next day that Kaim Khan's brother had done so.

"The medical officer deposed that Sona Gazee's death was attributable to a wound which had ruptured both the peritoneum and a portion of the large intestines.

"The prisoners, who pleaded *not guilty*, made various defences, such as being near the spot and therefore implicated, though innocent, in the charge, or *alibi*. They called comparatively few of the numerous witnesses in attendance, and in no instance supported the defence made, to my satisfaction. Even in the evidence of these witnesses, there is corroborative proof of a mutual affray having in fact occurred.

"Asadoolla (prisoner No. 24,) was the leader of the one party and Kaim Khan (who has hitherto evaded arrest) of the other. I cannot, on reflection, see much distinction between the guilt of the two parties; Kaim Khan had two days before committed precisely the aggression on Ameena Bebee's estate and ryots, which he collected his men by beat of drum to resent, when committed in retaliation on his own property. Both parties appear in fact to have been ripe for mutual aggression, and both to be culpable to the same extent"

The prisoners on trial on the present occasion pleaded *not guilty*.

Their active implication in the affray was however proved to my satisfaction by the witnesses named in the margin,* and by reference to the previous trial of the other rioters. The prisoners were named from the commencement of the inquiry in the mofussil to the close of the trial in the sessions court.

* No. 28, Allymuddeen.
" 29, Sadir.
" 30, Madhoo Meyah.
" 33, Abbas Ally.
" 34, Kalem Sha Fukeer.

The prisoner, Oozeer Khan, regarding whom alone, of the prisoners, this reference is required, pleaded having fallen from a tree some months before the occurrence of the affray, and having been incapacitated by the consequences of the accident from using his limbs as a rioter must necessarily have used them.

He called some witnesses who certainly deposed to having heard that he had experienced a fall in the month of Jyet previous to the affray; that is, six months before its occurrence. But none of them could state that the effects of the fall continued up to, or even nearly up to, the date of the affray, or were, in fact, at any period serious. He is the leader, Kaim Khan's brother, and the evidence to his presence and to the active share

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he took in the affray is particularly strong and satisfactory. He looks well and hale, and I can see nothing in his appearance or gait to lead me to believe that the witnesses for the prosecution have perjured themselves, and that he really was a lame man on the 25th of November, in consequence of a fall occurring in June. The Mahomedan law officer, however, thinks differently,and would acquit him as having been physically incapacitated from joining in the affray by the consequences of his fall.

Rejecting the evidence of the witnesses in the case of the prisoner, the Mahomedan law officer, however, concurs with me in thinking that it suffices to convict the rest. The prisoner, Faloo *alias* Fellanyah (No. 4,) Ramzaun (No. 5,) and Nowaj (No. 6,) limited their defence to a denial, but called no witnesses to support it. The prisoner, Keyamuddee (No. 7,) pleaded illness at home, but his witnesses did not maintain his defence satisfactorily. The prisoner, Emambux (No. 3,) adopted a form of defence, ingenious enough, but not unusual in this district. He pleaded that he had been convicted of an assault on a person named Fyzoo on the date of the occurrence of the mutual affray and sentenced by the deputy magistrate of Moonsheegunge to a fine of 5 Rs. The records show that the complaint was preferred sixteen days after the affray happened. The plaintiff brought his own witnesses into court (no summons were required or issued) and the defendant made a voluntary appearance and brought his witnesses with him also. There can be no doubt that the complaint was a friendly one instituted with the sole view of proving an *alibi* in the more serious charge of affray, the prisoner preferring to pay a paltry fine, or endure a brief term of imprisonment to standing the consequences of an active participation in an affray attended with fatal results.

The Mahomedan law officer, concurring with me in convicting Falloo *alias* Fellanyah (prisoner No 4,) Ramzaun (prisoner No. 5,) Nowaz (prisoner No. 6,) Keyamuddee (prisoner No. 7,) and Emambux (prisoner No. 3,) of the crime charged against them, I sentenced them to five years' imprisonment with labor in irons, execution of the sentence to be kept in abeyance until the Court's orders are received on this reference, I would recommend the same punishment in the case of the prisoner, regarding whom my reference is made.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H T. Raikes and J. S. Torrens.) The same evidence has been found good in respect to the other rioters; and the witnesses testify to an active part having been taken in the affray by this prisoner. The judge, with the prisoner before him, was well able to judge of the validity of the plea advanced; and seeing no reason to differ from him, we convict the prisoner.

PRESENT:

H. T. RAIKES, Esq., *Judge* AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

PEER MAHOMED (No. 8,) PANDUB GOONIN, (No. 9,) NEWAZOODDEEN (No. 11,) HANIFF (No. 12.) MOHURRUM (No 13,) ROHOMUT (No. 14,) CHAMAROO NAGARCHEE (No. 15,) ALLOYA ALIAS ALLA BUX (No. 16,) SHADOLLAH (No. 17,) MOHEBOOLLAH (No. 18,) ALLY MAHOMED (No. 19,) JUGGOREE (No. 20,) SHUMSHEREALLY PATAN (No. 22,) BRIJOLALL SINGH (No. 23,) ASSADOOLLAH (No. 24,) ROJAB ALLY (No. 25,) DURBARRIE (No. 27,) MANOOLLAH (No. 28,) SHERE MAHOMED (No. 29,) PANDUB CHUNG (No. 30,) KHOOZIL (No. 31,) AND KEYAMUDDIN (No. 32,) APPELLANTS.

Tipperah.

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Case of PEER MAHOMED and others.

Prisoners convicted of affray with murder and wounding.

CRIME CHARGED.—Affray, in which Sona Gazee was killed, and Rohomut and Brijololl wounded.

CRIME ESTABLISHED.—Affray, attended with the culpable homicide of Sona Gazee and wounding of Rohomut and Brijololl.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 29th February, 1856.

Remarks by the sessions judge.—Ameena Bebee and Kaim Khan are proprietors of two independent or *kharijah talooks* in Kismut Sutrokhundu', pergunnah Suryle, a very turbulent part of the district; Kaim Khan appears to have attached and cut the crops of a ryot on Ameena Bebee's estate, named Emambux, but to have effected the attachment in the names of a suppositious under-farmer Mohurrum, (in reality only a ryot) and of a fictitious defaulter named Ameer. In reprisal Asadoollah who is Ameena Bebee's naib and chief man of business attached the crops of a ryot on Kaim Khan's estate, named Sadoollah, setting up, as Kaim had done before him, a factitious claimant and defaulter. In proceeding to carry out this attachment and removing Sadoollah's crops, Asadoollah and the body of men who accompanied him (stated by the darogah to amount in number to two hundred or two hundred and fifty, but more probably to fifty or sixty) were met and opposed by Kaim Khan, who had summoned together an equal number of partisans by beat of drum. In the affray which ensued, Sona Gazee, a part-proprietor of Shadoollah's crop was killed by a thrust with a *rye bâs*, and

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Brijololl and Rohomut (prisoners Nos. 23 and 14,) were wounded the former losing his little finger, and Rohomut being slightly wounded in the side.

The case appears to have been taken up by the police in the first instance as one of riot confined to Asadoollah and his retainers, Kaim Khan having on the same day laid an information to that effect sending in at the same time the corpse of Sona Gazee. Asadoollah who was apprehended on the 30th idem gave on that day his version of the affair which converted the supposed riot into a case of mutual affray. On the following day, that is, on the 1st December, Kaim Khan presented a supplemental plaint making the parties whom Asadoollah the day before had named as his witnesses, defendants, on the plea that he had forgotten them when making his first deposition.

Asadoollah accounted to the darogah for his silence from the 25th to the 30th by stating that Kaim Khan had kept him in close confinement during the intervening days. Before the magistrate he dropped this plea, but adopted it again in the sessions court. This inconsistency coupled with the absence of all proof of his having been under restraint, precludes acceptance of this mode of accounting for his silence. I believe the truth to be that he was fully conscious of the serious consequences to which the breach of the law, committed under his order, had exposed him, and was not anxious to hasten them by making his appearance at the thannah earlier than was necessary even to implicate his opponents.

That the affray was a mutual one seems to me to admit of no doubt. The evidence for the prosecution is derived in four instances from witnesses of unusual respectability, three of whom are independent talookdars, and the fourth a merchant. Two of these witnesses appear to be distantly connected with Ameena Bebee, but their evidence showed no tendency whatever to lessen the criminality of her naib and ryots, at the expense of their opponents. The remaining four witnesses, if of lower grade than those to whom I have alluded, deposed to what they saw and knew in a manner to impress me with a belief that they were speaking truly. Looking back to Peer Mahomed's first petition to the police, in which, as I have already remarked, the case was described as one of simple riot, I find the names of two witnesses Kallachand Lalla (No. 126), and Shib Dutt (No. 127), mentioned as qualified to prove the charge. Looking further into the record I find that these witnesses were examined by the magistrate, and that their depositions went clearly to show that the affray was two-sided.

The wounded man Brijololl Singh (prisoner No. 23), stated, to the darogah and to the magistrate, that he had been wounded by his employer, Asadoollah (prisoner No. 24), for refusing to assault Sadoollah (prisoner No. 17), and others. Brijololl

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Singh, (prisoner No. 23), appears to have been one of six *lattials* employed by Asadoollah (prisoner No. 24), to aid him in this act of violence, and he was perhaps induced to make the statement of his having been wounded by his own master for refusing to be guilty of violence, by the necessity of accounting for his wound (he had lost a finger) and at the same time, if possible, of justifying himself. Before me, he stated that he did not know who had wounded him, but had heard the next day that Kaim Khan's brother had done so.

The medical officer deposed that Sona Gazee's death was attributable to a wound which had ruptured both the peritoneum, and a portion of the large intestines.

The prisoners, who pleaded *not guilty*, made various defences such as being near the spot, and therefore implicated though innocent in the charge, or *alibi*. They called comparatively few of the numerous witnesses in attendance, and in no instance supported the defence made, to my satisfaction. Even in the evidence of these witnesses, there is corroborative proof of a mutual affray having in fact occurred

Asadoollah (prisoner No. 24), was the leader of one party, and Kaim Khan (who has hitherto evaded arrest) of the other I cannot, on reflection, see much distinction between the guilt of the two parties; Kaim Khan had two days before committed precisely the aggression on Ameena Bebee's estates and ryots, which he collected his men by beat of drum to resent, when committed in retaliation on his own property. Both parties appear in fact to have been ripe for mutual aggression and both to be culpable to the same extent.

I observe that Asadoollah has once before been imprisoned for six months for violence and oppression, on which occasion the deceased Sona Gazee gave evidence against him. This, however, occurred eleven years ago, and I do not think that I should be justified in linking the two circumstances together. There is no evidence to shew satisfactorily by whose act, Sona Gazee's death occurred. He was speared in the affray, but by whom, is not apparent.

The Mahomedan law officer finding the prisoners guilty of mutual affray, attended with the culpable homicide of Sona Gazee and liable to *tazeer* (with the exception of two released on account of insufficiency of evidence against them), I sentenced them as below.

Sentence passed by the lower court.—Nos. 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 28, 29, 30, 31 and 32, to be imprisoned for five years, and No. 24 for seven years, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens). Mr. Norris has appeared on the part of Kaim Khan's ryots, and urges that the attack was made

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by the other party, in proof of which he points to the fact of his side having lodged their complaint at once at the thannah, while the other parties never made any report of the case till five days afterwards.

On this point, we would observe that Kaim Khan's party had on their side a man killed, and it was therefore necessary to account immediately for his death. This was in itself a reason for a prompt complaint; whereas though one of Ameena Bebee's *lattials* was wounded, she had no such reason for hastening on an enquiry into the dispute.

We have also heard the depositions of some of the witnesses, on which the sessions judge so implicitly relies, and those statements place the fact of a mutual affray having taken place beyond doubt.

We have also weighed and considered the probabilities adverted to by the judge, and see no reason to differ from the conclusion he arrived at.

Seeing no reason to interfere with the sentence of five years passed upon the prisoners, we confirm it.

PRESENT:

H. T. RAIKES, ESQ., *Judge* AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

ANUND ROY (No. 2,) GUGGUN MUNDUL (No. 3,) AND POOTEE MUNDUL (No. 4.)

Hooghly.

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Case of ANUND ROY and others.

CRIME CHARGED.—1st count, dacoity on the night of the 11th March, 1853, in the house of Ramdhun Roy of Chaklah, thannah Kollinga, zillah Baraset; 2nd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committed by Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Prisoners acquitted of dacoity, &c. the evidence being inadequate.

Tried before Mr. G. D. Wilkins, officiating additional sessions judge of Hooghly, on the 29th February, 1856.

Remarks by the officiating additional sessions judge.—The prisoners, Anund Roy, Guggun Mundul and Pootee Mundul, are charged with the dacoity at Chaklah, zillah Baraset, on the night of the 11th March, 1853, and with having belonged to a gang of dacoits.

There is but one witness in this case, Kadir Shikaree approver. In his confession taken down on the 24th November, 1853,

he confessed to having been engaged in this dacoity, and denounced, as associated with him in it, the three prisoners. Prisoner Anund Roy's name appears in two places, but not amongst the seventeen persons, who, the approver in his confession stated, formed the gang that night when it started on the expedition.

In these two places, Anund Roy is thus alluded to, 1st "I have heard that Anund Roy of Chaklah was the spy," and 2ndly (after giving the whole history of the case first and the seventeen names of the dacoits concerned afterwards) "we cut bamboos at Busaldah, at Chaklah; Anund Roy comes," in answer perhaps to some question not entered. The confession was taken down evidently by Mr. E. Jackson himself in English and is to the above effect; but the Bengali translation of this confession differs very materially, although it is attested by Mr. Jackson; I would have called upon Mr. Ward for an explanation, had the papers not been prepared by his predecessor.

Before me the approver witness names as having been engaged in this dacoity, again seventeen persons, the three prisoners being at the head of the list and the name of Khoodrutoollah being omitted. As respects the details of the dacoity, the witness gives in his defence now the same particulars as before. The sole point of difference is Anund Roy, prisoner No. 2, having himself conveyed the information to the witness. He has been cross-questioned with regard to every matter mentioned in his original confession and has differed in this one point only. He adds all three prisoners were regular members of Seeluk Shikaree's gang, but that they joined any other gang when invited to do so.

In corroboration of the above direct testimony, there is the evidence of witness N . 2, the darogah of Nyhatee, to the prisoner's mofussil confessions at the time, viz.; on the 24th November, 1853. They had been arrested by the police thus: Guggun Mundul, the chowkeedar of the village, had absconded from Chaklah immediately after a previous dacoity, and the darogah heard he had returned just at the time of this second dacoity. He confessed on being arrested, and implicated the prisoner, Anund Roy, *the approver witness*, Ramchand Chowkeedar, and several more; but not the prisoner, Pootee Mundul, *his brother*. Ramchand was arrested and named, amongst others, the prisoner Pootee, Mussulman (Mundul) "Guggon's brother" the witness and the two other prisoners. Anund Roy confessed, and named both his fellow-prisoners, but not the approver witness; Pootee denounced the witness and prisoner, Anund Roy, and his, Pootee's brother, Guggun prisoner No. 4; but this last name is smeared over and I mistrust it. One Mohun too was arrested and denounced the approver and the three prisoners.

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The former was arrested as a notorious bad character, but released by the police. At that time he made no confession.

Before the magistrate, all the prisoners but Guggun, No. 3, retracted their confession, saying it had been extorted from them; but Guggnn again admitted before the magistrate, he, prisoner No. 2, and others, had been concerned in the offence, so far as going or intending to commit it; but he added that he had not joined in going or entering the premises. This time he omitted to name the witness, Kadir Shikaree, and again his brother, the prisoner Pootee. All the prisoners were, on that occasion, discharged by the magistrate for want of legal proof; though it would seem to have been sufficient against Guggun at all events.

Beyond the above, Jurreeb Shikaree confessed to having been concerned in this dacoity on 24th May, 1853, two months only after it had been perpetrated, and he denounced in it the three prisoners, though not the approver witness. The reason for this omission probably is that the two who are Shikarees, were related. This confession, which I have seen, was taken down by the commissioner Mr. Jackson, himself.

The defence is a denial in toto of the offences charged. Anund Roy states that there are family quarrels in his village, and that he has been named by the approver at the instance of his enemies. He cites witnesses to character only. He adds that his alleged mofussil confession in 1853, was extorted from him by violence, and that he was unaware of the statements he was then driven to make. Guggun merely says he knows nothing about the approver; and that his 1853 confession was extorted from him; and he too cites witnesses to character only. *He does not explain how he came to confess before the magistrate in* 1853. Pootee says, the witness Kadir owes him a grudge on account of his (Pootee's) brother having carried off his (Kadir's) sister from her home. He denies the 1853 confession, adding he was ill at the time, and his witnesses also are to character only.

Thirteen witnesses have been examined for the prisoners, four for Anund Roy, two for Guggun, and seven for Pootee. They all either give the prisoners a direct bad character, or speak doubtfully regarding them.

I convict the three prisoners on the 1st count, and release them on the second; this one dacoity being apparently the only one they have ever been compromised in, and the one approver's testimony alone being insufficient to establish a charge of having belonged to a gang of dacoits, and I sentence them each and severally to ten (10) years' imprisonment with hard labor in banishment under the provisions of Regulation No. XVI. of 1825 and II. of 1834.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T.

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Case of ANUND ROY and others.

Raikes and J. S. Torrens.) The proof in this case is not satisfactory. There is only the evidence of a single approver both to the commission of the offence and to the complicity of the prisoners therein. This approver's confession on the 24th November, 1853, contains a description of this dacoity such as any one might have given, but free from all details which might be susceptible of independent proof. The additional sessions judge has found corroborative proof in the statement of the darogah of Nyahuttee, who took the confessions of the prisoners now under trial when arrested, on suspicion of having committed this dacoity. But it is material to remark, that although these men are said to have confessed to this darogah, when in the mofussil, they, one and all, withdrew their confessions before the magistrate, on the plea that this darogah had ill-treated and extorted the confessions recorded by him, and the magistrate must have regarded them as questionable; for having no other proof to rely upon, he discharged them all. It seems to us a great mistake on the part of the sessions judge, with no other evidence before him now, but that of an approver and the statement of the darogah against whom this accusation was made, and who cannot be expected to criminate himself by admitting it, even if true, to have placed implicit confidence on these confessions as corroborative evidence of the prisoner's guilt. It is hardly necessary to advert to Zukee Shikaree's depositions when an approver; the prisoners were never confronted with him and it should not have been considered by the sessions judge to the prejudice of the prisoners.

The prisoners are acquitted.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

KURUM ALEE AND GOVERNMENT

versus

RAMSING MANJEE (No. 22,) DOORGA MANJEE (No. 23,) PHOLAR MANJEE (No. 24,) SOORJEE MANJEE (No. 25,) RAMAEE MANJEE (No. 26,) RUGHOO MANJEE (No. 27,) ANDA MANJEE (No. 28,) DHONAE MANJEE (No. 29,) SOORBANG MANJEE (No. 30,) LOCHOO MANJEE (No. 31,) MEERZA MANJEE (No. 32,) JEETOO MANJEE (No. 33,) BHAGBUT MANJEE (No. 34,) SEEDOO MANJEE (No. 35,) URJOON MANJEE (No. 36,) PHOODUN MANJEE (No. 37,) BHADOO MANJEE (No. 38,) JULAY MANJEE (No. 39,) LUKHUN MANJEE (No. 40,) GONESH MANJEE (No. 41,) NEMAE MANJEE (No. 42,) BHULOO MANJEE (No. 43,) KALIDAS MANJEE (No. 44,) AND DOORGA MANJEE (No. 45.)

Beerbhoom.

1856.

July 19.

Case of RAMSING MANJEE and others.

Prisoners, convicted of riot with murder, transported for life.

CRIME CHARGED.—Riot, attended with the wilful murder of Bishonath Singh, Beni Singh, Damoodur Singh and Debnath Singh.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of zillah Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of zillah Beerbhoom, on the 28th April, 1856.

Remarks by the sessions judge.—During the late disturbances, early on the morning of the 16th October, 1855, 31st Assin, 1262, B. S. a Beerbhoom Ghatwal, Bishonath Singh, heard the Sonthal drum, the signal of the rebel gathering, he collected his family and was making off for a place of concealment, when he was met by prisoners Nos. 23, 41 and 42. No. 23, of his own ryots, a Sonthal, telling him that there was no fear, pursuaded him to turn back. Some three or four hours after this, a body of 3 or 400 Sonthals armed with swords, bows and arrows, &c., attacked the house and set it on fire. The females and children of the family, fourteen in number, hastily escaped by a back door, under charge of an uncle and brother of the Ghatwal and concealing themselves for a time in a jungle covered hill, eventually proceeded to the house of another Ghatwal where they were hospitably entertained till the troubles were over.

The Ghatwal with his relations Beni, Damoodur and Debnath and some others, his dependants, proceeded to the principal

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entrance to meet the Sonthals, he was immediately surrounded and No. 22, (attended by two men with peacock feather fans and marked with a vermillion spot on the forehead as a symbol of authority) saying that he was come to take the country as Governor, and that the Ghatwal must be killed and his house destroyed, cut him down, and prisoners Nos. 24, 25, 26, 27, 28, 29, 30, 31 and 32, despatched him, No. 23, the man who had so deceitfully persuaded him to turn back, cutting off his head after death.

Witnesses Nos. 1, 2, 3, 4 and 8.

The other men who were with the Ghatwal, attempted to make their escape, which, the place being thickly covered with jungle nearly close up to the doors, some of them were able to do, and lying hidden, saw what was done to their less fortunate companions.

Damoodur, an old man, sixty years of age, uncle to the Ghatwal, was first cut down by prisoners Nos. 37 and 38, and others not yet apprehended, his flight being stopped by an arrow from prisoner No. 37.

Witnesses Nos. 5 and 7.

Beni Singh, another uncle, was then caught and killed by prisoners Nos 33, 34, 35 and 36, the first blow being struck by No. 33.

Witnesses Nos 5 and 7.

Debnath Singh, a brother, was killed by prisoners Nos. 39, 40, 42, 43, 44 and 45, the last named striking the first blow.

Witnesses Nos. 8, 9, 10 and 11.

Dhooloo Sheikh and Force Sheikh were also killed, but it was not seen by whom; Kaloo Roy, witness No. 2, was wounded and left for dead, fortunately for him his head was not cut off as was the case with most of the others.

The case was made known to the magistrate by Sheikh Kurm Ali an old servant of the Ghatwal; it was enquired into in the usual manner, but it was not thought necessary to send in the bones of the deceased men, which were, however, seen by the police and an inquest held.

Witnesses Nos. 13 to 25.

Of the men apprehended, four were released and one man escaped and No. 41, has not been brought to trial (though committed) on account of his illness. I did not like to postpone the whole, keeping witnesses, &c. away from their homes for the sake of one man.

The prisoners deny the crime and have done so at every stage of the enquiry; some of them stating that they were in a distant part of the country at the time, but no one, though I gave them all the opportunity, could shake the evidence against them by cross-examination, nor could they bring any forward in their own

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defence. The evidence is so clear and conclusive that there is no doubt of the guilt of these misguided men.

The jury, with whom I tried the case, found the whole guilty as charged, with this I, in the main, concur. I consider Nos. 22, 23, 33, 37 and 45, guilty of murder in the first degree, as having each struck the first blow in each case, and No. 23, also in the first degree, he having been the man that enticed the poor Ghatwal, and afterwards cut off his head; the remaining prisoners Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 42, 43 and 44, I find also guilty of murder, there being this addition to the crime of No. 22, that he was the leader of the party, but whether self-elected or not, I do not know.

Had this trial been held shortly after the occurrence and when example was needed, I should of course have recommended that sentence of death should have been passed on those I consider guilty in the first degree, but for reasons mentioned in a former letter, viz. the want of malice, the idea that the Sonthals were to be rulers and the inapplicability of our laws to a savage people, I cannot think that these men should be judged by such rules as are suitable to men in a more advanced state of civilization.

No. 143, dated 16th April, 1856.

I recommend that Nos. 22, 23, 33, 37 and 45, be transported for life and kept to hard labor in irons, and that Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 42, 43 and 44, be imprisoned for life in this country with labor and in irons.

Supplementary remarks by the sessions judge regarding prisoner Gunnesh Manjee (No. 41.)

Gunnesh Manjee has this day appeared; the whole of the proceedings that related to him, viz the depositions of the plaintiff and of three witnesses were read over to him in my presence and he was asked what objections he had to make. He stated that he had not committed the murder nor plundered, but was absent from his home. He brings no evidence, saying that he was persuaded by the ghatwalee amlah not to do so and did not think it necessary.

Witnesses Nos. 10, 11 and 12.

The witnesses as per margin* speak positively to the fact of his being one of the murderers of Debnath Singh, I therefore find him guilty in the second degree and recommend as in the case of the others, that he be imprisoned for life in this country with labor in irons.

* Witnesses Nos. 10, 11 and 12.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The evidence of the eye-witnesses is sufficient to prove that the prisoners surrounded the house of Bissonath, and without any apparent provocation murdered the individuals, whose names are mentioned in the indictment.

The proof, however, in our opinion, is not so clear as to identify those among the prisoners, who actually struck the blows, which deprived the deceased of their lives. It is true, as stated by the sessions judge, that the witnesses named certain of the prisoners as the actual perpetrators of the murders; but looking at the state of fear and mental confusion with which they must have witnessed all that passed, and the length of time which has elapsed since these crimes were committed, we feel great hesitation in putting implicit reliance on this part of their statements.

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We convict the whole of the prisoners of acting together in concert and with one object, aiding and abetting each other by their presence and numbers in committing the offence laid to their charge, and sentence them all to transportation for life.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

MUSSAMUT ROOKHOO BEBEE AND GOVERNMENT
versus
JEEWUN LALL.

Patna.

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Case of JEEWUN LALL.

Forgery, &c. Appeal rejected.

CRIME CHARGED.—1st count, uttering a forged power-of-attorney marked A.; 2nd count, attempting by virtue of a forged power-of-attorney fraudulently to register a forged Will marked B.

CRIME ESTABLISHED.—Same as crime charged.

Committing Officer —Mr. J. M. Lowis, officiating magistrate of the city of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 5th April, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty.*

Witnesses Nos. 1, 2 and 3, depose to the prisoner having produced the power-of-attorney marked A. at the office of the Cazee of the city of Patna, with a view to procure the form of a Will to be duly signed and attested by one Rookhoo Bebee by whom the power-of-attorney to do this was said to have been granted to the prisoner, also to prisoner having brought the Will so signed and attested for registry. Witness No. 4, Russicklall Sookool, an old servant of Rookhoo Bebee, and the person whose name was forged as acting for Rookhoo Bebee, proves that the power-of-attorney, produced in court, marked A. and the Will purporting to be that of Rookhoo Bebee in favor of Sheopershad marked B. are both of them forgeries of his signature and

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Rookhoo Bebee's seal, intended to benefit Sheopershad, a distant cousin of Rookhoo Bebee, and for that purpose deliberately uttered by Jeewun Lall, prisoner, with a view to register, in order to future fraud on the rightful heirs of Rookhoo Bebee. Witness No. 6, Oodwunt Gowalla, also a servant of Rookhoo Bebee, deposes to his *not* having subscribed his name as witness to any document emanating from Rookhoo Bebee in name of Jeewun Lall prisoner. (Oodwunt's name is on the *mookhtearnamah* as witness to its execution by Rookhoo Bebee, and a witness personating him must have accompanied Jeewun to the Cazee's office to attest the *mooktearnamah*, thus adding subornation of forgery to the forgery itself.) Rookhoo Bebee's evidence before the magistrate, she herself being too ill to attend the court, has been duly attested before me, she utterly denies the documents produced in court, being drawn up by or for her.

The prisoner makes no defence beyond a denial of the crime charged to him.

His witnesses depose to having seen Rookhoo Bebee, Russicklall Sookool, Oodwunt and Jeewun Lall prisoner together, and to Jeewun being told to go with Oodwunt to the Cazee with like stories tending to uphold the genuineness and goodness of the documents A. and B. all manifestly untrue.

The jury bring in a verdict of guilty of the charges noted in the calendar in which I concur.

I convicted the prisoner Jeewun Lall of forgery.

1st. In uttering the forged power-of-attorney marked A. entered on the record.

2d. In attempting to register a forged Will marked B. also entered on the record with evident intent to defraud the rightful heirs of Rookho Bebee; and sentence him to four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The defence by the prisoner, is that he had been given the *mookhtearnamah* by Rookhoo Bebee in the presence of the witnesses, whose signatures are affixed, as attesting the execution at the time. These witnesses, as well as the deposition of Rookhoo Bebee, clearly show that no such execution took place, and the witnesses whom defendant had summoned in support of his statement, wholly fail to prove it. We confirm the orders of the sessions judge.

PRESENT:
H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT
versus
SREEMUNTO MALAKUR.

Hooghly.
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Case of SREEMUNTO MALAKUR.

Prisoner convicted of murder, but with reference to the evidence adduced as to the weak state of his mind and his being under a temporary frenzy from indisposition, capital sentence not passed, and imprisonment with labor for life adjudged as recommended by the sessions judge.

CRIME CHARGED.—Wilful murder of his mother Tincowree Maleenee and wounding his wife Hurrosoondory Maleenee with intent to kill her.

Committing Officer.—Mr. R. H. Stephen, deputy magistrate of Serampore, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 14th May, 1856.

Remarks by the additional sessions judge.—The prisoner, Sreemunto Malakur, is charged with the wilful murder of his own mother, the deceased Tincowree Maleenee, and with having also wounded his wife Hurrosoondory Maleenee with intent to kill her.

The testimony of the wife, witness No. 1, (who is competent to give evidence against her husband in such a case) is to the effect that on the 10th Phagoon last, she and her husband had a quarrel, on account of the dinner not being ready, when her husband twice slapped her face; that prisoner was also angry with her mother-in-law (the deceased), on this account, which he had no right to be; that witness after she had been struck, retired for the night with her mother-in-law to a place apart from the prisoner; that about 4 A. M. on the 11th the prisoner wished to be admitted into the room where witness and her mother-in-law were sleeping, but that the latter would not allow him to enter; that prisoner then became greatly enraged, and with a sola-cutting knife he was in the habit of using in his trade, (which has not been produced,) rushed upon and attacked, first his mother, and then his wife, killing the first by cutting her throat, and wounding the last, but much less severely, both in the throat and back. On being cross-examined, the witness admits that there had been a disagreement on the night of the 10th on another matter, the mother-in-law siding with the wife. Prisoner had become impotent, and was denied access to his wife, and they had had a quarrel about it.

On being attacked by the prisoner, the witness Hurrosoondory screamed out. Her screams were heard by two of her nearest neighbours, the witness Ramtarruck Doss and Boykunto Doss, who hastened to her assistance. They found the mother dead from the throat

No. 1, Hurrosoondory Maleenee.

Nos. 2 and 3, Ramtarruck Doss and Boykunto Doss.

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cut, and the wife wounded. The latter at once told them who had done it. The prisoner was then searched for, and after a little time he was overtaken by witnesses Nos. 2 and 3, about a mile from home walking away to the southward. He said when seized it was "his fate" to kill his mother, and that he was going to Doorkatta. He resisted arrest, and threw himself down on the ground, saying he would not go back with the witnesses; but they carried him home forcibly and bound. A little blood only was found on his clothes.

The two witnesses Ramtarruck and Boykunto say, the prisoner, for some reason they are not acquainted with, had been out of his mind for a month or six weeks previously; that his mother had treated him medicinally for madness; and that his derangement was such that he abused people without cause as they passed his door, and did not know right from wrong. The wife (witness No. 1,) also says that during this period he was constantly losing his temper without cause, and was in fact out of his senses; but that his mother could nevertheless always control him by chiding. The medical officer, Dr. Baillie, witness No. 15, in his evidence before the magistrate declared him to be sane, but laboring under great anxiety, as the prisoner had told him from having recently become impotent, which was, the witness added, probably the real cause of his disagreement with his wife. Before me this witness after hearing the evidence, and after (at my request) examining the prisoner's person, gives a somewhat modified opinion. He thinks the prisoner of decidedly weak intellect, but still with enough intelligence to answer questions and to attempt to deceive. He cannot pronounce him insane, but he thinks when excited or angry he would be unable to control his actions or to know the effect of what he did. He finally declares him partially, if not altogether, impotent.

The prisoner confessed the charge at the thannah, and again (then or the first time alluding to his disease) before the magistrate. He affected to believe his wife had been untrue to him, and that his mother had been cross to, and ill-used him for not earning sufficient to support them all comfortably. Before me he has pleaded "*not guilty,*" and on being asked why, as he had confessed previously, added, his fellow prisoners in jail had advised him to do so. He of course cites no witnesses, and has had no one to plead for him.

Witnesses Nos. 7, 8, 12 and 13, Aubhoychurn Bhur, Gooroochurn Bhur, Gobindchunder Dutt and Gooroochurn Mudduck.

The law officer declares the prisoner to be sane and to be liable to death by *kissas*.

I concur in this verdict. The two witnesses, Ramtarruck and Boykunto, by the words they used, had evidently agreed together,

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the case, probably in their estimation, being a doubtful one, to say what they could for the prisoner's insanity; and the wife to a certain extent the same. But the prisoner by running away from home, and resisting capture after the deed had been done, evidently knew he had committed a crime; he gave the *thannadar* a reason, for what he had done, he knew was not the true one; his conduct in jail, while under Dr. Baillie's observation, has shewn him to be sufficiently in possession of his reason to know and dread the result of his act; and even his reply before me, though commencing and interlarded with (I think simulated) incoherencies, is, to my mind, as rational as it is probably true with regard to the reason of his change of plea. There was a reason for what the prisoner did, and the motive was, anger and retaliation for being prevented having access to his wife. Lastly, the medical officer is decidedly and clearly of opinion, the prisoner has been and is sane when not excited; and the general good will not admit of such a person committing a heinous crime with impunity, because anger or excitement, if not controlled, finally induces a state when the person affected is so bereft of his reason as to be unaware of what he is doing.

Still the prisoner is of a low order of intellect; has disease upon him which unhinges his mind to a certain extent; and is under certain circumstances frenzied and in a state of temporary insanity; and I therefore, under the precedents quoted in the margin,* would not recommend a capital sentence, but instead, imprisonment with labor for life.

* Queen *versus* Westron (England) 1856. Government *versus* Dirgopal, Sudder Nizamut Adawlut reports for 1854, part 1, page 119.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) There is little use in commenting much on the trial, as the prisoner's defence, up to the sessions, involves a virtual confession of his guilt. With advertence to the sessions judge's recommendation for mitigation of punishment, we observe the medical officer examined, deposes as follows: "I cannot say he (prisoner) is positively insane; and as to the state of his mind, when the act of murder was committed, I can of course form no opinion; but it is very easy, I imagine, that such a weak-minded man would be unable to control, or even to know the effect of any thing he did when in a state of excitement."—With such an opinion before us, we think the best course is to pass the mitigated sentence recommended, when the circumstances are such as would render capital punishment of little effect as an example. We therefore sentence the prisoner to imprisonment as recommended; as transportation, with reference to the state of mind and health of the prisoner, would not be proper.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT

versus

BHABELLAH.

Assam.

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Case of BHABELLAH.

Prisoner sentenced to death. The evidence and his own admissions showing that deceased had died by his hand, and the plea that he had acted on the defensive, not being established.

CRIME CHARGED.—Murder of Kotai Mussulman on the 30th December, 1850.

Committing Officer.—Captain C. Holroyd, magistrate of Seebsagur.

Tried before Major H. Vetch, deputy commissioner of Assam, on the 24th April, 1856.

Remarks by the deputy commissioner.—I shall premise by observing, that it was formerly the custom in Assam to bury jewels and valuables with their deceased kings and nobles, and the prisoner appears to have been one of those engaged in ransacking their tombs for buried treasure and had made the deceased (who was a petty shop-keeper) believe that he had gained possession of a valuable diamond; this deceased was eager to purchase, and from time to time made advances to the prisoner, at last he became urgent to have the jewel, and two or three days before his death, the prisoner's mother came and invited him to go with her to her son, that the bargain might be completed by further payment. He went and took with him money and goods to pay for it. On arriving at the prisoner's abode, he was again put off till the following day, when he was inveigled into a solitary place to complete the bargain and there murdered.

After the deed the prisoner and prisoner's mother, Musst. Pelonee, appear to have fled, and nothing was heard of the latter until a skeleton was discovered in the jungles and recognised as her remains from the clothes found near it, among these was a napkin with 13 rupees tied up in it.

Before the police, when first apprehended, the prisoner confessed that he had formerly been concerned in digging into graves, and the deceased thinking he had been successful in discovering jewels, asked him for a diamond angta, which he (prisoner) said he would sell him, and under this pretext obtained 50 Rupees in cash and goods; at last the deceased with the girl Chokoo came to his residence for the diamond, he promised to give it next day, and the following forenoon the deceased, the girl Chokoo, the prisoner with his mother, went to a place in the jungles where the Tikelia Nagas had had some outlying cultivation; there they sat down under a *tong*, to bargain when deceased gave prisoner 25 Rupees in cash and

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other things, he then said he would give the diamond some other time and prepared to leave the spot, on which the deceased seized him, when he (prisoner) wounded him in the face with a knife, while deceased inflicted three spear wounds on prisoner's hands, he (prisoner) then gave deceased some more wounds and went away, the knife he threw into the jungles, he admitted that the deceased died from these wounds. As for the diamond, he never had one, but merely pretended that he had, in order to swindle deceased.

Before the foujdary prisoner confessed to the same effect; further that the deceased snatched from his waist a napkin and abstracted from it a diamond weighing four annas and he tried to recover it, when deceased wounded him with his spear.

Before the jury he pleaded *not guilty to wilful murder*, and in his defence alleged that deceased first wounded his (prisoner's) mother with a spear, when he attacked and wounded him with his knife; that the strife arose out of deceased wishing to obtain the diamond for 20 Rupees.

The only eye-witness to the deed was the servant girl of the deceased, Musst. Chokoo, aged twelve years, who appears to have been in the habit of accompanying her master.

Mussamut Chokoo.

She deposes that on the invitation of Musst. Pelonee (prisoner's mother) the deceased was induced to accompany her to her son's residence to purchase the diamond for which he had long been in treaty, he took with him 26 Rupees in cash, a pair of gold ear ornaments, gold and silver beads, a silver temy, some articles of women's clothing, an area cloth, and two *tollahs* of opium; that she accompanied them; on reaching the house where the prisoner resided with his father-in-law, deceased asked for the diamond, but the prisoner put him off till next day, when, in order to prevent the transaction being known, the prisoner and his mother took *them the site of a Naga* clearing the *jungles;* here they sat down to conclude the bargain, there the prisoner received the cash and goods, saying he would give the diamond, but again put off doing so, and it getting late in the day the deceased rose to go home, when the prisoner, who had also risen, came forward on pretence of giving it him and wounded him on the cheek with his knife, on seeing which, witness in alarm fled to the village of the Tekelia Nagas, and gave information, five of these villagers accompanied her, and, on arriving at the spot, found the deceased weltering in his blood, but still alive, he asked for some opium which witness prepared and gave him to drink, but it ran out through the wound, and not long after, he expired. Neither the prisoner nor his mother

This witness in her deposition, before the foujdary court, stated that whilst the prisoner seized the deceased by the neck, prisoner's mother, Pelonee, laid hold of deceased's legs, and on his being

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thrown on the ground prisoner inflicted the wounds. Another witness Pooran before the foujdary court also states that she mentioned this circumstance in his hearing.

was seen, no property found, except a *tuslah*, a cup, a *hookah*, and the deceased's broken spear, which last was previously whole. The prisoner had frequently obtained goods and money from deceased under the pretence of selling him a diamond, and a few days previous, the prisoner told the deceased that he must have more money, when asked to part with it. On being questioned, witness denied having seen the deceased strike the prisoner, she never saw the diamond produced for inspection. In reply to prisoner's question, she says, prisoner took the cash and property, and tied it in his *kamurbund*, and that she never saw deceased seize, or strike the prisoner; that she was never at a distance, she was told by prisoner to go away that she might not see him giving the diamond; but she only went a few paces and got up into a tree where she remained for a short time, and could see what passed, and again rejoined deceased and was eye-witness to what took place.

Mussamut Daljani.

This witness (wife of the deceased) deposed to his having been in treaty for about a year to obtain a diamond *angtee*, from the prisoner, who, on pretence of having it, had, from time to time obtained cash and goods to the value of 200 Rupees; that he was induced by this object to accompany the prisoner's mother, and took with him 26 rupees in cash and other things to complete the purchase. The third day after, some Nagas came and told her that her husband had been found dying, and, on reaching the spot, saw his dead body covered with wounds. She there heard from the girl, Chokoo, that he had been killed by the prisoner.

Joormun Sadonee.
Bhodiah.
Gaum Doania.

Three witnesses depose that on the report of Komeheng, they went to the spot and found the deceased covered with wounds, but still alive; he said that Bhabellah had wounded him, and asked for opium, which the girl, Chokoo prepared and gave him to drink, but he could not swallow it, and shortly after expired.

These witnesses also depose to the apprehending of the prisoner near the house of his father-in-law, (Dhellah Sykea) his clothes were stained with blood, and he had slight hurts on his wrist and fingers, and in the house some articles were found which had formerly belonged to the deceased.

Dhellah Sykea.

The father-in-law of the prisoner deposes that the deceased, a girl, and Mussamut Pelonee, the prisoner's mother, arrived at his house, saying that they were going to purchase cattle, and wished to take the prisoner with them, they remained that

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night and left next day; at night the prisoner came home with his hand hurt, and clothes stained with blood, saying that when deceased was bargaining with him for a valuable jewel, three men came upon them, killed deceased, and took away the money, he proposed giving information at the thannah that night, but was persuaded to delay till next morning, and when on the way they were met by Joormun Sadonee and others, who charged prisoner with the murder and took him into custody; of the property found, some belonged to deceased and some to prisoner.

These witnesses prove the *sooruthal*, and the two former and Nobinchunder prove the confession made by the prisoner before the police.

Rungmonee Hazaree.
Joormun.
Suroomonee.

Mr. sub-assistant surgeon Dinonath Doss.

Deposes to having inspected the corpse and describes the wounds to have been numerous, and inflicted with some cutting and pointed instrument, and that these wounds were the cause of deceased's death, that the one on the back part of the neck by which the muscles were cut and the vertebral bone exposed, was alone sufficient to cause it.

Jaubur Tucka.
Sewram.

Two witnesses prove the confession before the foujdary.

Mussamut Arfolie.

This witness (the prisoner's wife) deposed to the deceased and her husband's mother putting up one night at her father's house; that the prisoner and the girl Chokoo, all went away next day. Near midnight the prisoner returned with his clothes covered with blood and said whilst he and deceased bargained about a jewel, three persons came upon them and wounded the deceased, himself and his mother, and that he wished to go and report this to the police but her father detained him till morning, he gave her 11 Rupees to keep, which he said he had brought off.

Dowai and Koomchung.

Two witnesses depose to Musst. Chokoo coming to their village and telling what had happened to deceased, to finding him wounded and to carrying the news to the deceased's family and the Sadoundar; the former further stated that the deceased named Bhabellah as the person who had wounded him.

Yanund.

Deposes that Mussamut Chokoo told him that Bhabellah had wounded the deceased, that he had assisted in burying the corpse in Nazirah.

Doorga, police Jemadar.

Deposes to having drawn up the *sooruthal*, examined the spot and found much blood there, further states that he made search for the weapon, but in vain, also that he some time after saw the skeleton of prisoner's mother in the jungle.

Four witnesses depose to Mussamut Pelonee having gone out

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Anpochoo.
Kandoorah.
Buckoorah.

with the prisoner and deceased, and that she was never again seen alive, and in searching the jungles, they found a skeleton, and near it some clothes and a knife, and a napkin with 13 rupees tied up in it, which they had divided among them but afterwards gave up.

Khokooah Barrah, Choonkhoa, witnesses for defence.

The two witnesses for the defence were unable to state any thing in the prisoner's defence.

Opinion of the jury and magistrate.

The jury in their verdict find the prisoner guilty of culpable homicide, whilst the magistrate finds him guilty of wilful murder, and observes that the defence now set up is evidently an after-thought, the slight cuts on prisoner's hands are such as he would have received when the deceased was struggling with him for life; and that the brutal manner in which the deceased was mangled, leaves no doubt in his mind of the determination of the prisoner, and the attempt to throw suspicion of the act on the Takelia Nagas, after having allured the deceased to their vicinity, leaves strong impression on his mind of the act being premeditated; he finds no extenuating circumstances whatever in the prisoner's favor and recommends a capital sentence.

Opinion of the deputy commissioner.

I am of opinion that it has been clearly proved that the deceased, Kotai, was inveigled by the prisoner, Bhabellah, to accompany him to a retired spot in the jungles, where, after swindling him (deceased) of money and goods under the pretext of giving him a diamond in return, finding he could no longer continue his impositions, and taking advantage of place and circumstances, he attacked the deceased with his knife and therewith inflicted many and grievous wounds, which caused the death of the deceased, I accordingly find the prisoner, Bhabellah, guilty of the murder of Kotai Mussulman, and as I see no ground for leniency, I concur with the magistrate in recommending that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The details of this case are very fully given in the respective reports of the magistrate and deputy commissioner.

The prisoner, when on trial, admitted that the deceased had died by his hand; but excused his act by declaring the deceased had first attacked his mother and then turned upon and wounded him.

There are, however, too many circumstances against the prisoner to allow any weight to this self-serving part of his defence.

In the first place, the prisoner had no diamond; and the pretence of delivering one to the deceased could not have been

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Case of BHABELLAH.

the real object of enticing him into the jungles. The evidence of the girl Chokoo very clearly details what took place there in her presence, how the money and valuables, brought by deceased, were made over to the prisoner, how he again made excuses regarding the diamond, and then attacked the deceased with his knife, how she ran off and gave the alarm at the Naga village, the residents of which corroborate the fact of her having told this story to them, and speak to their finding the deceased weltering in his blood, and to his death immediately afterwards. There is then the contradictory statement made by the prisoner to his father-in-law, and the subsequent discovery of eleven rupees, he gave to the girl at his house, and the 13 rupees found in a napkin near the skeleton-remains of his mother. This last circumstance shows, we think, that the prisoner and deceased must have shared the 26 rupees taken by the deceased; and it is most probable that, after the mother and son separated with the intention of making off with the plunder, that the woman sunk in the jungles under some wound she received from deceased's spear; for, doubtless being so armed, he may have attempted to defend himself. Be this, however, as it may, the fact of the prisoner and his mother having in their possession so much of the money brought by the deceased, proves the falsehood of his story of the attack and robbery made upon them by Nagas, and shows that the defence he now has recourse to is contradictory, and has been an after-thought to meet the charge.

We fully adopt the view of the case taken by the deputy commissioner; and holding that the murder was premeditated and perpetrated with the view of so disposing of his creditor, we condemn the prisoner to suffer death.

PRESENT:
H. T. RAIKES AND J. H. PATTON, ESQS., *Judges*,
AND J. S. TORRENS, ESQ. *Officiating Judge.*

GOVERNMENT
versus
GOBINDCHUNDER SEN.

Hooghly.

1856.

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Case of GOBINDCHUNDER SEN.

Prisoner sentenced to three years' imprisonment with labor and irons on conviction of personating an officer of the dacoity Comr. seizing certain individuals and extorting money from them.

CRIME CHARGED.—1st count, falsely, fraudulently and for his own advantage, personating an officer on the establishment of the Hukk Sahib or commissioner for the suppression of dacoity; 2nd count, fraudulently obtaining from Kasee Byan, the sum of two rupees and from Greedhur Goir the sum of three rupees, on the false pretence that he and one James Fitzpatrick by whom he was accompanied, were officers on the establishment of the "Hukk Sahib" or commissioner for the suppression of dacoity; 3rd count, illegally imprisoning one Kasee Byan and thereby extorting from him the sum of rupees two.

CRIME ESTABLISHED.—Personating an officer in the dacoity commissioner's department, and as such, apprehending persons and taking bribes from them for their release for his own use and benefit.

Committing Officer.—Mr. H. L. Dampier, magistrate of Howrah.

Tried before Mr. G. D. Wilkins, officiating additional sessions judge of Hooghly, on the 10th March, 1856.

Remarks by the officiating additional sessions judge.—The evidence in this case is overwhelming. In July, 1855, prisoner was shewn into the house of James Fitzpatrick, witness No. 5, by a neighbour of his* (Fitzpatrick's.)

There were there at the time other Europeans of the same class.† Prisoner shewing some papers as his authority, offered Fitzpatrick a situation as drill serjeant under the Rajah of Burdwan at a salary of 50 Rupees per mensem, besides free quarters; Fitzpatrick, who is an illiterate simple person, (he is an old pensioner) consented, and prisoner hiring first two common coolies as chapprasies,‡ and then two palanquins and bearers,§ proceeded with his employè down the river in a boat to a village called Moheshpore. There he told Fitzpatrick in English (the latter not understanding Bengali) he had come round that way to collect some "taxes" due to the Rajah, while

* Witness No. 9.

† Witnesses Nos. 6 and 8.

‡ Witnesses Nos. 3 and 4.

§ Witnesses Nos. 10 and 11.

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he gave out to the villagers in Bengali* that his companion was the dacoity commissioner (to some he said he was the dacoity commissioner's serjeant) and he (prisoner) was his "amlah" their visit being to search for and seize "*budmashes.*" He then commenced searching houses, and seizing persons of respectability† but released them on being paid to do so. He was in the very act of ill-treating one respectable person in the village, whom he had kept in confinement the whole of the previous night, when the Rajapoor darogah,‡ who happened to be in the neighbourhood and who had heard some thing of what was going on, at once arrested and sent him in. This was on the 24th July. Fitzpatrick, it appeared, had taken no part in the oppression on the villagers, and he told the darogah what he has said throughout, and which witnesses, Nos. 6, 8 and 9, prove to be the case, that he understood he was being carried round about to Burdwan to receive service from the Rajah. The prisoner gave the darogah a wrong name (calling himself Radhabenode Dutt) and owned he had taken some money from the villagers, which too was found upon him; and in one of his palanquins were found a police officer's red turban, two imitation police chapprasies, and some old Government salt records from Midnapore.

* Witnesses Nos. 3, 4, 10, 13, 14, 15, 16 and 19.

† Witnesses Nos. 13, 14, 15 and 16.

‡ Witness No. 1.

The prisoner's defence to the darogah and before me has been, that Fitzpatrick engaged him as a writer on 15 Rs. a month to go with him to Midnapore, representing himself as a road-serjeant just appointed there; while before me, prisoner adds he disapproved of what Fitzpatrick made him do at Moheshpore, and was thinking of leaving him, and that this prosecution has been got up by an old enemy of his uncle's, a zemindar of influence of the name of Jugduber, Fitzpatrick being his (Jugduber's) tool in the matter. The witnesses, cited for the defence, do not in any way support this very absurd story. They even differ materially on the only point they speak to. Fitzpatrick having gone to prisoner's house to engage *him*, a most improbable thing to occur, where the parties had never, as is admitted, seen one another before. The prisoner is evidently a clever and most dangerous rogue. There are two other cases against him of the same description before me, in one of which I have been obliged (from the way in which the police have behaved in it,) to release him, while the other has been referred to the sudder.

The law officer declares the prisoner liable to discretionary punishment by "*tazeer*," and concurring fully in that verdict, I sentence him, under the provisions of Regulation LIII. of 1803, Section 2, Clause 7, to seven years' imprisonment with

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labor and irons for "personating an officer in the dacoity commissioner's department, and as such, apprehending persons and taking bribes from them for their release for his own use and benefit."

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. H. Patton and J. S. Torrens.)

Mr. H. T. Raikes.—I consider a sentence of three years, with labor commutable to a fine of fifty rupees payable in one month, quite adequate punishment in this case. The personation was certainly made with the object of extorting money, and the prisoner got five rupees by his stratagem; but beyond the terror he caused, I do not find that any severe means were used to gain his ends; when we find that sentences of seven and five years are usually passed for offences of affray with wounding and homicide, for rape, perjury and forgery, I scarcely think a misdemeanor of this description should be visited with equal severity.

Mr. J. S. Torrens.—The personation of an officer of the dacoity commissioner, seizure and confinement of parties by such personation, and obtaining money from them for their release has been clearly brought home against the prisoner. Mr. Norris appears on his behalf, and pleads for a diminution of the punishment, representing that two years' imprisonment is the greatest punishment which the Nizamut Adawlut have ever sanctioned in corresponding cases. It appears, however, that none of the cases to which he refers were attended with the aggravated circumstances of this; nor can I find any precisely similar one. The judge, no doubt, saw good reason for imposing a heavy punishment for an offence by which such gross oppressions were shown to have been perpetrated; and notwithstanding former precedents, I should be unwilling to interfere, but my colleague thinking the sentence extreme, I would, on consideration of those precedents, reduce it to five years.

Mr. J. H. Patton.—This is a reference for a third voice, owing to a difference of opinion between the presiding judges, as to the extent of punishment to which the prisoner is obnoxious. The sessions judge recommended a sentence of seven years, which Mr. Raikes would reduce to three, and Mr. Torrens to five years. There can be no doubt that the sessions judge's recommendation is *ultra*. The offence, though grave, is but a misdemeanor; and there are few misdemeanors that merit any thing like so heavy a punishment as seven years' imprisonment. Under all the circumstances of the case, I think that the ends of justice will be satisfied by the imposition on the prisoner of the minimum sentence proposed, namely, three years with labor commutable to a fine of 50 Rs. payable in one month.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ. *Officiating Judge.*

GOVERNMENT

versus

BUKSHOOLLAH.

Backergunge.

1856.

July 22.

Case of BUKSHOOLLAH.

Prisoner convicted of wilful murder of his wife on direct evidence to the fact. Plea of insanity, admitted by the law officer contrary to the opinion of the judge, set aside, as the evidence of the assistant surgeon and others proved that prisoner was of sound mind.

CRIME CHARGED.—Wilful murder of Musst. Ahnoo; she was wounded on the 8th April, 1856, and died from the effects of the wound on the 11th idem.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 6th of May, 1856.

Remarks by the sessions judge.—The prisoner has been committed to take his trial on a charge of the wilful murder of his wife, Musst. Ahnoo. In this court, the prisoner pleads *not guilty*. Before the darogah, Mr. De Solminihac, he confessed. This confession has been attested by the witnesses named in the margin,* and appears to me to have been a voluntary one.

* No. 7, Rajkishen Bonik.
,, 8, Kishenchunder Ghose, mohurir of the thannah.

The facts of the case are briefly these: on the 8th of April last, corresponding with the 27th Chyte, the prisoner sent his brother-in-law, Janoo, witness No. 15, to fetch an unripe cocoanut, as the prisoner felt thirsty. Janoo was some time bringing the fruit and the prisoner became impatient, and kept asking his wife, the deceased Ahnoo, when Janoo would come. It appears the wife put her husband off by saying that Janoo was coming. The prisoner then ordered his wife to bring him some water. She did so, when she was about to give him the water, he seized her by the hair and with a sickle, produced in court, and which weighs 2¼ *chittacks*, and a sketch of which is submitted with the record of the trial, he then and there cut her throat. The woman rushed to the house of a neighbour, witness No. 5, her husband following her. He was then apprehended by the witnesses named in the margin,† and taken to the thannah with his wife, who was alive, but unable to articulate.

† No. 2, Mahomed Suduk.
,, 3, Furreed.
,, 4, Shurreutoolla Chowkeedar.
,, 5, Kallay Khan.
,, 6, Hazaree.

The woman died in the dispensary of this station on the 11th April, 1856. The medical officer‡ deposes that there was an incised wound dividing the trachæa which caused death, and

‡ No. 9, Dr. M. Scanlan.

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that such a wound might have been inflicted with a weapon of the description produced in court.

In the mofussil, the wounded woman by signs intimated that she did not wish to press the charge against her husband, though she also signified that he was the person who wounded her.

The direct evidence of the witnesses in the margin,* the mofussil confession together with the admissions made by the prisoner to the witnesses, noted in the margin,† are sufficient for the conviction of the prisoner of the crime with which he is charged.

* No. 1, Musst. Puncha.
,, 14, Musst. Konee.

† No. 2, Mahomed Saduk.
,, 4, Shurriutoolla Chowkeedar.
,, 5, Kallay Khan.

The law officer convicts the prisoner and declares him liable to *deyut*, *kissass* being barred by the suspicion of mental aberration at the time the murder was committed.

I concur in the conviction, but differ with the law officer in the opinion he has arrived at, respecting the sanity of the prisoner. I am fully sensible that a man, labouring under adventitious insanity is, during the frenzy, entitled to the same indulgence in the same degree with one whose disorder is fixed and permanent, but to excuse a man from punishment upon the ground of insanity, it must be proved distinctly that he was not capable of distinguishing right from wrong at the time he did the act. In this case, such proof is, I submit, wholly wanting.

The medical officer deliberately deposes to the perfect sanity of the prisoner, in this opinion I fully concur. I have talked to the prisoner and have carefully watched him whilst others have been talking with him, and I must say that I consider him to be in the perfect possession of his senses and consequently a responsible agent. His demeanour in court was quiet and subdued, his answers were coherent and much to the point.

Before the darogah, the prisoner stated that he wounded his wife, when under the influence of a disease called the "*batick rog*" a kind of hypochondria. The witnesses noted in the margin,‡ depose that for some ten days before the occurrence of the murder, the prisoner was suffering from the aforesaid disease and was in the habit of abusing people, but that he was not violent.

‡ No. 1, Musst. Pancha.
,, 14, Musst. Kounee.
,, 15, Janoo.
,, 3, Furreed.
,, 5, Kallay Khan.
,, 6, Hazaree.

This plea of temporary insanity is set up by every prisoner, since the superior Court, in the case of Government *versus* Lallchand Kyeburt, deemed it proper to sentence the prisoner in that case to imprisonment for life in the zillah jail. In the

1856. July 22. Case of BUKSHOOLLAH.

present case, the most has been made by the witnesses of some bodily ailment, to make it appear that the intellects of the prisoner were temporarily affected by disease, but the mere effect of bodily disease in irritating his temper cannot be regarded as forming any sufficient ground for mitigation of punishment in a crime of this nature. The murderous assault on his wife was a brutal and cowardly one, the prisoner too, wounded in the hand and kicked off the witness, Musst. Puncha, a young girl, who attempted to interfere on behalf of the deceased, and in his confession before the darogah, he admits that he was irritated, because there was delay in bringing the cocoanut, and because his wife did not go to hasten Janoo, who had been sent to fetch it. Considering then, that this atrocious crime must have been committed by the prisoner, when in the full possession of his senses and finding no extenuating circumstance to plead in his behalf, it is my painful duty to recommend that he be sentenced to death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The commission of the murder by the prisoner is proved as clearly as it well can be, by the witnesses who came to the assistance of the deceased when her husband first attacked her. We have therefore only to consider whether the fact of the insane state of the prisoner, which is set up in exculpation, is established. On this point, we quite agree with the sessions judge, that there are no grounds for concluding that at the time the prisoner committed this unprovoked and cruel murder, he was not conscious of his acts, and fully answerable for them. The medical officer, in his evidence on the point, very distinctly deposes that, after the closest observation of the prisoner, he could discover no indication of his having suffered from a deranged state of mind. The nature of his admissions when he was arrested, immediately on the occurrence, as far as the record shows, indicates that he was in no insane state; and his answers and conduct, before the magistrate, on his defence in which he himself alleged that he was not, when making it, conscious of what he was doing or had done, indicates that he was feigning insanity, probably on its being suggested to him that the plea might prevent the consequences of his guilt. Under this view of the case, we sentence the prisoner capitally as recommended by the sessions judge.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

Beerbhoom.

TOLOE OR TONOO MANJEE.

1856.

July 22.

Case of TOLOE or TONOO MANJEE.

Prisoner found guilty of rebellion by the sessions judge acquitted, as the evidence showed that he was in his own house when the rebels had fled to it, and contained nothing to prove that he had acted in concert with them.

CRIME CHARGED.—Rebellion.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 16th May, 1856.

Remarks by the sessions judge.—On the 10th November, 1855, during the Sonthal insurrection, a company of Siphaees under command of Captain Pester arrived at a village called Talberiah, the Sonthals armed, came out and attacked them, but having one of their party shot and another wounded, they fled, some to the jungles and some to the village, these latter were followed up and a woman showing what she said was the "Soobah's" house, it was immediately surrounded and in it were found about fifty Sonthals and with them two men wearing the Government *chuprass*, and swords, axes, bows and arrows, &c. The prisoner who was shewn as the head-man or "*soobah*" was seized in the act of running off by a *siphaee* by name Bahadoor Khan.

It is proved by rather scanty evidence that the man was a man of authority among the Sonthals, that though he denied having them, arms were found in his house. It is also said, but I think hardly proved, that he was one of the attacking party, nor do I think it proved that he assumed the title of "*soobah.*" He was probably called so as being a man in authority as "*ijaradar.*"

He is a decrepid old man and strenuously denies his guilt, but being a man of authority, he might have done much to stop the outbreak. I concur with the jury in finding him guilty, but beg to recommend that he be imprisoned for five years with labor, but without irons on account of his age and infirmity.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The only circumstances proved in this case are, that the prisoner was in his own house when the Sepoys surrounded and took him into custody. In the house, there were other Sonthals and some arms. At the time alluded to, martial law had not been proclaimed, and as far as we can judge from the above circumstances there is nothing in them criminatory of the prisoner. The sessions judge, though con-

viciting the prisoner as guilty of ***rebellion***, does not apprise us distinctly of the facts from which he has drawn such a conclusion.

1856. July 22. Case of Toloe or Tonoo Manjee.

We consider the charge not proved and acquit the prisoner.

This charge having been for an offence coming under Section 6, Act V. of 1841, the magistrate should, under the provisions of that Section, have reported the matter to the Government and have followed any direction prescribed for his guidance as to the tribunal before which the prisoner should be tried in the first instance.

As the Act enacts that these offences are cognizable by the ordinary courts of the country, we consider this failure to conform to the provisions of the Act on this particular point, does not vitiate the trial which is in itself strictly legal, but we are of opinion that the magistrate should have acted up to the rule of procedure prescribed by Section 6, and the sessions judge will bring this to his notice, and will himself abstain from trying prisoners in future until this formality has been complied with.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND SISTEEDHUR CHUCKERBUTTEE

versus

NUZEEM MEER.

Jessore.

1856. July 25. Case of Nuzeem Meer.

Sentence of the sessions confirmed, as the evidence as to the discovery of prisoner in the act of burglary was conclusive.

CRIME CHARGED.—1st count, attempt at theft by burglary in the house of the prosecutor, Sisteedhur Chuckerbutty, on the night of the 4th of April, 1856, corresponding with 23rd of Choitro, 1262, B. S.; 2nd count, illegally entering the house of the prosecutor, Sisteedhur Chuckerbutty, with some evil intent.

CRIME ESTABLISHED.—Attempt at theft by burglary in the house of the prosecutor, Sisteedhur Chuckerbutty.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. C. Jenkins, officiating sessions judge of Jeesore, on the 17th June, 1856.

Remarks by the officiating sessions judge.—The complainant states that, on the night of the 23rd Choit last, he heard a noise and saw through a whole in his house the light occasionally closed, as if something was being introduced into it. Suspecting burglars, as a few nights before a burglary had been attempted

1856. June 25. Case of NUZEEM MEER.

on his house, he got up, awoke the inmates of his house, and went out, when he saw three or four persons about his house.

They made their escape, but two of them were arrested by witnesses Nos. 1, 2 and 3, and are the prisoners now in court.

The witnesses for the prosecution corroborate the above statement and witnesses, Nos. 9, 10 and 11, prove that the prisoner Nuzeem had only lately been released from jail on the expiry of a sentence he had undergone on conviction of cattle-theft.

The prisoners plead *not guilty*, prisoner No. 1, Hullodhur, adding in his defence that the case, as against him, is false; that he was arrested in his own house and the complaint instituted out of malice, as the complainant has long been at enmity with his, the prisoner's master.

The prisoner No. 2, Nuzeem, made an admission before the police; but, both in the foujdary and in this court, he entirely disavows it.

The jury, with whose assistance, under the provisions of Act VI. of 1832, the trial has been conducted, find a verdict of guilty on the 1st count against the prisoner No. 2, Nuzeem Meer.

I concur in the above verdict and considering the prisoner an old offender as shewn, by the copy of the former sentence passed upon him, in a case of cattle-theft, I sentence him to imprisonment with labor in irons for (7) seven years.

The trial of the prisoner (No. 1,) Hullodhur is postponed with the view of causing the attendance of witness, No, 12, whose evidence the prisoner particularly desires, may be taken.

The police darogah bas failed to mention in his report any special reason for taking the confession of the prisoner, Nuzeem Meer, at night in another place than in the thannah, as required in Clause 3, Section 19, Regulation XX. of 1817. The magistrate of Jessore will be requested to warn the police officer of his neglect.

The final disposal of the case, as regards the prisoner Nuzeem Meer, was postponed for two days in consequence of the *roobacaree* of commitment, not having been filed with the record.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We see no reason to interfere with this conviction. The evidence, as to the apprehension of the prisoner at the spot, is trustworthy and conclusive of his guilt.

PRESENT:

H. T. RAIKES, Esq., *Judge*, and J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT and RAMKISSOON DOSS

versus

MOOSOOHUR KOOUR (No. 2,) and PERTUM SONAR (No. 3, APPELLANT)

Tirhoot.

1856.

July 28.

Case of PERTUM SONAR and another.

Sentence of the lower court confirmed by which prisoner was awarded five years' imprisonment with labour and irons for receipt of stolen property.

CRIME CHARGED.—Prisoners Nos. 2 and 3, 1st count, burglary and theft of property, valued at Rs. 6,203-10-6; prisoner No. 2, 2nd count, knowingly receiving and being in possession of stolen property, valued at Rs. 4,872; prisoner No. 3, 2nd count, knowingly having in possession part of the stolen property, valued at Rs. 4; prisoners Nos. 2 and 3, 3rd count, being accessaries before and after the fact to the said burglary and theft.

CRIME ESTABLISHED.—Prisoner No. 2, being an accomplice in the burglary and theft of property, valued at Rs. 6,203-10-6, in the house of the prosecutor. Prisoner No. 3, knowingly receiving and being in possession of stolen property, valued at Rs. 4.

Committing Officer.—Mr. H. C. Wake, officiating joint-magistrate of Chumparun.

Tried before Mr. G. L. Martin, officiating sessions judge of Tirhoot, on the 19th February, 1856.

Remarks by the officiating sessions judge.—The prosecutor's shop at Banignia bazar was burglariously entered on the night of the 17th October last, and property carried off to the value of Rs. 6,203-10-6, consis ing chiefly of pearls and cash. The police at first refused to investigate the matter, and only did so ultimately on a special order from the joint-magistrate. It appears that on information obtained through Karee Chowkeedar, the darogah searched the house of the prisoner No. 2, at mouzah Burrahee Jagdeo, when in the presence of the witnesses Nos. 1 to 5, the stolen property marked 3 to 6, was found; and the prisoner taking the darogah to a field in the out-skirts of the village, before him and the above witnesses pointed out a hole in which was buried the stolen property, marked Nos. 1 and 2, consisting of pearls of two sizes, valued at Rs. 4,587-8. The prisoner further delivered up to the police Rs. 193 cash, confessing in the presence of the witnesses Nos. 1, 2, 3, 4 and 5, that he prisoner No. 3, went to the prosecutor's village to buy bullocks; that they put up that night at the same house; that during the night he overheard prisoner No. 3, and Bagele Rai say they would go and rob the prosecutor's house; that accord-

1856. July 28. Case of PERTUM SONAR. and another.

ingly they went and committed the robbery, and returning woke up him, and all three left the village; that about day-break they divided the booty with him on the banks of a tank.

The house of the prisoner No. 3, having been searched on the above information in the presence of the witnesses Nos. 9 and 10, a *thali* marked No. 8, part of the stolen property and a "*sendkati*" were found, both of which the prisoner No. 3, stated before the police had been left with him by the prisoner No. 2.

Before the joint-magistrate prisoner No. 2, made the same confession as in the mofussil, which is attested by the witnesses Nos. 6, 7 and 8. The prisoner No. 3, before that court varied his first defence and said that the *thali* and *sendkati* found in his house had been sold to him by the prisoner No. 2, for 2 Rs.

Before this court the prisoner No. 2, reiterated his former confessions, and summoned two witnesses to prove his respectability, which they declined to assert. The prisoner No. 3, again varied his defence, stating before this court that he had purchased the *thali* from the prisoner No. 2, for 2 rupees; and that the "*sendkati*" was an instrument of his trade as a Sonar. He examined two witnesses to the former fact, neither of whom appear to be trustworthy; besides that, one of them is related to him. And he also examined four witnesses to swear to his respectability, whose evidence is equally undeserving of credit.

The fact of the burglary being proved; of part of the stolen property having been found in the houses of the two prisoners, and part in a field pointed out by prisoner No. 2, coupled with the confession of the prisoner No. 2, and the defence of the prisoner No. 3, in whose house the "*sendkati*" used by burglars was found, in my opinion fully justifies the verdict of the law officer which convicts the prisoner No. 2, of being an accomplice in the burglary, and theft of property, valued at Rs. 6,203-10-6, in the house of the prosecutor, and the prisoner No. 3, of knowingly receiving and being in possession of stolen property, valued at Rs. 4. I have accordingly sentenced the prisoners to the periods of imprisonment noted below. I have further directed that agreeable to the provisions of Act XVI. of 1850, a fine be levied upon both prisoners (realizable by sale of their property) in proportion to the amount of the stolen property not recovered.

Sentence passed by the lower court.—Prisoner No. 2, to be imprisoned with labor in irons for the period of five (5) years. Prisoner No. 3, to be imprisoned with labor in irons for the period of three (3) years. Agreeably to the provisions of Act XVI. of 1850, a fine will be levied upon both prisoners, realizable from their property in proportion to the amount, value of the stolen property not recovered.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T.

Raikes and J. S. Torrens.) The prisoner in appeal is shown to have received the plundered property soon after the occurrence of the burglary, and being discovered in his possession, he has given before the police, magistrate and sessions conflicting accounts of how he came by it. We see no reason for interference with the conviction and sentence.

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Case of MOOSOOHUR and others.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND SHEIKH DULLOO

versus

SHEIKH RUNNOO (No. 1,) AND SHEIKH KOOCHUL (No. 3.)

Midnapore.

1856.

July 28.

Case of SHEIKH RUNNOO and another.

A prisoner sentenced to capital punishment for wilful murder proved on the evidence to the fact. A second prisoner acquitted from there being no proof of his complicity.

CRIME CHARGED.—Wilful murder in having struck Oozirah, the daughter of the prosecutor, with a bamboo mallet, a knife, sticks, &c., and so pressed her throat for the purpose of causing strangulation, that she then and there died from the effects of such beating. The prisoner No. 1, is charged on a 2nd count, with aiding and abetting in the above murder.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 22nd May, 1856.

Remarks by the officiating sessions judge.—The prisoners plead "*not guilty*" to the charge of wilful murder brought against them. The circumstances as adduced from the evidence for the prosecution are as follows: The prisoner No. 2, Sheikh Koochul, incensed on account of a trivial misunderstanding about some few pice with his father-in-law, beat his wife Oozirah and turned her out of his house naked. She sought refuge with her father. This occurred on the Tuesday before her death. The following Sunday, Sheikh Koochul prisoner No. 2, accompanied by Sheikh Runnoo prisoner No. 1, went after night-fall, when half of the first watch had passed or about two *gharies* of the night, to Sheikh Dulloo, the prosecutor's house, and had an altercation with his wife in the presence of her mother* who shortly after, from some peculiar and extraordinary sense of delicacy, withdrew from his presence, he being her son-in-law. In reply to taunts as to her having carried off some property, Oozirah called her husband "the son of a slave." He on this threw her down, sat on her chest, beat her and throttled or suffocated her

* Witness No. 1, Moglanee.

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so that she then and there died. He must have been in the house according to the witness Moglanee some little time, she says one *ghunta*.

On the alarm being given by Moglanee, two Burkundazes* on their rounds followed by the chowkeedar ran to the spot, and arrested Sheikh Koochul, as he was escaping from the prosecutor's, with a *bamboo bludgeon* weighing one and half seers in his hand and a knife in his waist, and also Sheikh Runnoo prisoner No 1, just outside of the house, with a club weighing one and half seer in his hand. The prosecutor at this juncture arrived and, on entering the house, the party found the corpse of Oozirah which exhibited marks of beating and ill-usage. The defence set up by the prisoner Koochul is, that his wife died from a boil under her arm, with which she had been afflicted for some time, and to be treated for which she had gone by mutual consent to her father's house; that on hearing of her death from his brother-in-law and others he went to the prosecutor's house. A dispute arose and he was beaten and taken into custody on this false charge. Runnoo's defence is similar; but his confession before the magistrate is that on Koochul's requesting him to go and bury his wife he accompanied him, and on the road Koochul said, "I will beat my wife; do you beat my father-in-law." He says he demurred; but still accompanied Koochul: and then goes on to describe how Koochul killed his wife while he looked on; and how finally they were both arrested.

* Witness. No 2, Chooramunee Singh Burkundaze.
,, ,, 3, Ghunnu Singh Burkundauze.

The aforesaid defence is totally unsupported, the evidence attempted to be given to prop it up, has completely broken down, and a remarkable fact is, that not a single relative or friend, save prisoner No. 1, Runnoo, accompanied Koochul for the alleged purpose of burying his wife. Even, by his own statement, he did not, when going to prosecutor's house, really believe that his wife was dead. Owing to the advanced stage of decomposition of the body, before the *post mortem* examination could take place, the civil surgeon Dr. Bogle was unable precisely to state the cause of death; but is inclined to believe that it resulted from suffocation by strangulation, this is corroborative of the evidence of Moglanee witness No. 1, and the confession at the fouzdaree of prisoner No. 1, where Sheikh Koochul is declared to have thrown the deceased down and sat on her chest. There are no doubt, contradictions and discrepancies in the evidence for the prosecution, but not of so material a nature as to be unaccounted for by the confusion and consternation likely to result from such a tragedy, or such as to invalidate the material facts elicited from it, especially when the defence has totally failed and where no enmity is shewn to

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have existed on the part of the prosecutor or his wife. It is urged by the connsel for the prisoner Koochul, that the report which the burkundaze dictated to Juttee Potdar, written by him in the Ooriah character, and then transmitted to the jemadar of the Pharee, is opposed to the burkundaze's depositions, inasmuch as the former says, Koochul was at the house when they first reached it, and told them of the murder. It must be remembered that this report was dictated by two illiterate burkundazes, one only a little before promoted from a chowkeedar's situation; that the writer is no great scribe, and that the report was written, according to the witness, four or five *ghuries* or some three hours after the occurrence. It undoubtedly was written long after the prosecutor got home, and I do not think it can be fairly taken to invalidate what they and other witnesses have sworn to. In regard to the animus of the prisoner Koochul, the *futwa* infers that he acted on the impulse of sudden anger, provoked by the deceased's abusive address to him "son of a slave;" but when the words attributed to him by Koochul are taken into consideration, with the fact that on leaving the house, where Oozirah's body was found, he was seized with a large bludgeon in his hand, and a knife on his person, coupling all this with his recent scandalous behaviour to his wife, great malice on his part may be justly inferred; and it is impossible to believe that Oozirah met her death in any other way than at his hands. I see no extenuating circumstances in this prisoner's favor, and am of opinion that he should be visited with the extreme penalty of the law. The *futwa* acquits prisoner No. 1, because he took no active part in the deed, this is so far true; but he accompanied the prisoner, knowing his malicious intent of beating his wife, uttered directly after he had proposed to go and bury her. He stood with a club in his hand outside of the house, saw, as he admits in his confession, Koochul's fatal assault on his wife; and in no way attempted to thwart or prevent him. He is clearly guilty of being an accomplice in the crime. One of the witnesses, in his defence, declares Runnoo to be of weak intellect, but this he does not himself plead; nor is there any such appearance of this as would justify his acquittal in my opinion. I would therefore recommend that he be sentenced to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The defence set up before the sessions by both these prisoners is, that the deceased had been ill from something like abscess under her arm and had died from the disease.

The witnesses, on the part of the defence, who deposed to this as the cause of her death, were not believed by either the sessions judge or the Moulvee; and we think, had such a cause

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really existed, some trace of it would have been found on the body at the *post mortem* examination, whereas the medical officer, as far as he could judge from appearances, gave it as his opinion that the woman died from suffocation or strangulation.

There is, in our opinion, sufficient proof on the part of the prosecution to bring this death home to the prisoner Koochul. The witness Moglanee, though varying somewhat in the details given at different examinations, is quite consistent and credible on the most material facts; and from her statement, there is reason to believe not only that the prisoner Koochul killed his wife, but that he did the act intentionally.

Had he not fully intended to take her life, the outcries she and her mother raised, would have induced some forbearance; but it is clearly shewn from Moglanee's evidence that he did not leave the deceased until he had deprived her of life; and as that was effected by strangling her, there can be no doubt the act was deliberate and long continued. It is also, as far as we can see, without even the extenuation of sudden provocation; nor is any such defence set up by either prisoner at any stage of the investigation. Holding the prisoner Koochul, to be guilty on sufficient proof of the wilful murder of his wife, we condemn him to suffer death; and agreeing with the Moulvee that nothing is proved against the other prisoner Runnoo, we direct his release.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges*, AND J. S. TORRENS, ESQ. *Officiating Judge.*

Midnapore.

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Case of SAGUR BEARER.

Prisoner convicted on direct evidence of professional dacoity and belonging to a gang of dacoits. Sentenced to transportation for life.

GOVERNMENT

versus

SAGUR BEARER.

CRIME CHARGED.—1st count, dacoity on the night of 4th May, 1853, in the house of Sheesteedhur Paul, of thannah Culmijole; 2nd count, dacoity on the night of 9th July, 1853, in the house of Gour Mohun Mytee, of thannah Pertabpore; 3rd count, dacoity on the night of the 27th of September, 1853, in the house of Oodoy Chund Purda, (the master of Mudoo Munnah,) of thannah Pertabpore; 4th count, being by profession a dacoit and having belonged to the gang of dacoits, under Sirdars Mothoor Sein and Sumbhoo Doss (convicts.)

Committing Officer.—Captain C. H. Keighly, assistant general superintendent joint-magistrate, Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 13th May, 1856.

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Remarks by the officiating sessions judge.—The prisoner pleads *not guilty*, but cites no witnesses in his defence; stating his inability to do so, owing to his being imprisoned, in default of finding security for his good behaviour on the requisition of the late judge.

The five approver witnesses distinctly swear to the identity of the prisoner. In the evidence of No. 5, Bindabun Mytee, is shown that the prisoner is the son-in-law of Beychoo Bur; and in that of witness No. 6, Mudhoo Leeka, it comes out that the prisoner is a brother-in-law of one Peyloo Bur, who is the son of Beychoo Bur.

These witnesses also denounce him as an accomplice in the respective dacoities with which he is charged. In corroboration of the evidence of the approver's witnesses, the documents noted in the margin* have been laid before the Court. In the first mentioned case No. 503, the dacoity in Sheesteedhur Paul's house, Kalleyday Roy, phareedar, apprehended one Ruttun Junnah, who, in his confession, stated that Pelaram's brother-in-law, a released convict, was one of the gang that committed the dacoity. On Ruttun Junnah's confession, one Boicunt Saoout was arrested and named Pelaram's brother-in-law, as Sagur Bearer, and Muthoor Sein as engaged in the dacoity; Mothoor Sein is put down as witness No. 4, but he has deceased, and his evidence could not be taken. The second document is merely the copy of the report of the police darogah, shewing the occurrence of the dacoity. The original record of the case, it is stated, could not be found. In the third instance, the dacoity, in Oodoy Chund Pundah's house, case No. 549, one Peyloo Rana came forward, and in his deposition named Mothoor Sein aforesaid. This man also confessed, naming Sagur Bearer, Narain Munnah, Premchand Korungah, Mudhoo Lekha, and Moocheeram Dhoba approver's witnesses Nos. 6 and 3, of this case.

* Nuthee No. 503, dacoity in the house of Sheesteedhur Paul plaintiff.

No. 1, copy of a *Khutnama* of the police darogah.

Nuthee No. 549, dacoity in the house of Oodoychund Pundah master of Mudhoo Mannah, plaintiff.

Further Premchand Korungah in his confession, dated 4th October, 1853, names Sagur Bearer, and particularizes how he, Sagur, was one of the five dacoits, who got admittance into the prosecutor's house on the pretence of being silk-merchants. Sagur had absconded and was not seized in that case.

With reference to the averment of the confessing prisoner Ruttun Junnah, in Sheesteedhur Paul's dacoity, case No. 503, that the party he alluded to, as Pelaram's brother-in-law, was a released convict, the copybook of warrants shews that one was issued under date 3rd May, 1838, convicting Sagur Bearer, son of Madhub Bearer, of dacoity, and sentencing him to seven years.

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In my opinion the evidence of approver witnesses is fully corroborated by these documents, and I convict the prisoner of having belonged to a gang of dacoits and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. H. Patton and J. S. Torrens.)

Mr. H. T. Raikes.—The evidence against the prisoner consists of the statements of five approvers, who depose to having taken part in the several dacoities charged, and to the prisoner's complicity in each of them.

There is no other direct evidence on the record, nor the depositions of other and independent witnesses.

As there is nothing on record to show that the evidence of the approvers was given under circumstances sufficiently in themselves to guarantee its truthfulness, no conviction can be had unless the statements made by these persons are so corroborated, that reliance may be placed not only on the fact of the commission of the crimes stated, but on the important point of the prisoner's identity as one of their associates perpetrating them.

For this purpose, the sessions judge has relied on certain confessions made by prisoners when arrested in two of these dacoities. Pelaram Junnah did not name him, but only spoke of a son-in-law of Beychoo Bur; that the prisoner stands in that relation to Beychoo Bur is only deposed to by the approvers, and it is concluded that he was the identical person so described by Pelaram, because Boicunt named him in his confession to the police. This confession to the police by Boicunt has never *been authenticated* by the attesting witnesses, nor was it held sufficient for Boicunt's own conviction; in fact, as it stands, one cannot say that it is what it professes to be, viz. the true and genuine confession of Boicunt; it is quite impossible then to use it as proof against another. The corroborative proof therefore adduced for the first dacoity is, in my opinion, insufficient.

For the second dacoity, there is none at all. To the third, there is a confession of the approver, Muthoor Sein, who died before giving evidence. On this confession it appears, he was convicted, and subsequently turned approver but, as before adverted to, there is nothing to guarantee the good faith of these approvers. Cases have come before the court at Midnapore, and before this court, which have disclosed such gross and unmistakeable combination on the part of approvers to ensure the conviction of parties accused by them, that it would be exceedingly unsafe to allow their previous confession to be held as corroborative of their own or their fellow approver's statements. Such confessions having been long on record may be the very ground-work of false accusations afterwards concocted. I feel it therefore impossible to use this one of Muthoor Sein as any

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sound reliable corroborative proof of the statements made by his fellow approvers. There is besides it, only a mofussil confession of one Premchand Karunga; that confession has not been proved; and for reasons given above, regarding Boikant, is, in my opinion, no legal proof at all.

In the absence of corroborative proof of a nature sufficient to support the approvers, I would acquit the prisoner.

Mr. J. S. Torrens.—I concur in the recommendation of the sessions judge. Five witnesses, approvers, depose before him to having committed dacoities along with the prisoner, detailing the circumstances of those dacoities, and recognizing him in court There are no discrepancies, or contradictory statements in their evidence; and if we find it corroborated by statements, which were made several years before, at the time the dacoities were perpetrated, I do not see that we should reject the approver's evidence. The mention of the prisoner as having been concerned in the dacoities in the confessions of other parties, charged at the time, in the mofussil, would of course be no evidence in itself, on which the prisoner could be convicted, neither would the confessions of other prisoners recorded and attested before the magistrate; but when we find that all these tally one with another, as to the circumstances detailed, and also with the statements at present made by the witnesses, approvers, I think we can take the record of the confessions *pro tanto* as corroborating and supporting the direct evidence against him now given. I am aware that there have been cases, as remarked by my colleague, in which it has been shown that approvers' evidence, though somewhat circumstantially given in accordance with former confessions, has ultimately been discovered to be false, so as to lead to the conclusion, that there had been communications amongst them, which enabled them to get information respecting occurrences which they could not really have witnessed; but I cannot see that there is any thing in the record or proceedings in this case which evinces collusion or conspiracy of the kind, or that the proceedings have not been carefully and properly conducted by the committing officer, and in the sessions court. In weighing the evidence against the prisoner, we have also to take into our consideration, as in support of its truthfulness, his former character and mode of livelihood; and when we find that he has been twice imprisoned on sentences of seven years on being convicted of dacoity; that on one of the occasions he broke jail, and was recaptured; and that the dacoities in which the approver's evidence, now, and the confessions at the time, show him to have been engaged, were commenced a year only after his release from the last term of imprisonment, we must hold the circumstances as in support of the charge against him of professional dacoity. I would therefore sentence him as recommended by the sessions judge.

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Mr. J. H. Patton.—The approver evidence directly criminates the prisoner. It proves his complicity in several dacoities, and is a clear and consistent recital of facts. That evidence is corroborated by the confessions of certain parties arrested at the time of the occurrence of two of the dacoities charged. Premchand Karunga and Peyloo Rana were arrested in the Pertabpore dacoity in September, 1853, and in their respective confessions, the one directly, and the other indirectly, implicated the prisoner. The account of the affair given by Premchand Karunga seems peculiarly entitled to credit, setting forth as it does, the remarkable circumstance that the prisoner and four of his associates got admittance into the prosecutor's house on pretence of being silk-merchants. Again, Ruttun Junnah, who was arrested in the Culmajole dacoity in May, 1853, denounced the prisoner as an accomplice, in that affair, not by name it is true, but as the brother-in-law of Pellaram Bur and a released convict. The fact of the prisoner's alleged kinship with the said Pellaram is established by the confession before the police of one Boikunt Sawant, who was arrested at the time on the confession of Ruttun Junnah, and named the prisoner as the brother-in-law of Pellaram, and the fact of his being a released convict is abundantly evidenced by the prescribed register of warrants; which is said by the sessions judge to contain an entry, bearing date 3rd May, 1838, of the prisoner's conviction of dacoity and sentence to seven years' imprisonment. These circumstances go far to confirm the reality of the fact detailed in the confessions referred to, and consequently the general truthfulness of the confessions themselves. The question is not whether those confessions could be taken as legal evidence either against the prisoner, or the parties who made them; but whether any and what bearing they can legitimately be assumed to have on the evidence of the approvers as touching the trustworthiness of that evidence. In my opinion from the internal evidence of truth which they contain, they have a decided bearing and the tendency of that bearing is to corroborate and confirm. It is true, as remarked by Mr. Raikes, that "there is nothing on the record to show that the evidence of the approvers was given under circumstances sufficient in themselves to guarantee its truthfulness," but I may be permitted to observe, that it is equally true there is nothing on the record to indicate the converse of the case; and we are scarcely justified without reason, in assuming that to be false, which is laid before us as true under the sanction of judicial authority. Taking this view of the case, and considering the direct proof against the prisoner, confirmed and corroborated by the circumstantial evidence adduced on the trial, I concur in the conviction and sentence proposed.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND KASHEENATH MUNDUL

versus

MOHUN MUNDUL (No. 1,) GRISCHUNDER CHUCKERBUTTY (No. 2) ISSURCHUNDER CHUCKERBUTTY (No. 3,) AND DEBNATH NUNDI (No. 4)

Jessore.

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Case of MOHUN MUNDUL and others.

Prisoners charged with wilful murder, convicted of culpable homicide in absence of proof of intent to kill, and sentenced to ten years' imprisonment with labor and irons.

CRIME CHARGED.—1st count, wilful murder of Kishtochunder Mundul by beating him on the night of the 28th February, 1856, corresponding with the 17th of Phalgoon, 1262, B. S. from the effects of which he died on the night of the 1st March, 1856, corresponding with 19th of Phalgoon, 1262, B. S.; 2nd count, No. 1, being privy to the above murder.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 20th May, 1856.

Remarks by the officiating sessions judge.—The prosecutor is a younger brother of the deceased and asserts that on the evening of the 17th Phalgoon last, corresponding with 28th February, he had gone to a feast, from which he was called by witness No. 1, and other parties, who came to tell him, his brother, the deceased, had been severely beaten and was lying at his house (where witness No. 2, assisted by witness No. 15, and another had carried him from the place of assault) in a state of extreme debility and danger. On reaching his house, prosecutor found his brother, the deceased, much exhausted and in great pain, lying down.

On questioning him as to the assault, he distinctly stated it had been committed by the prisoners, Nos. 1, 2 and 3, and another person, his name he did not know, the prisoner No. 2, having held him firmly by the neck on the ground, while prisoners, Nos. 1, 3, and the 4th person, beat him severely in all parts of his body with short round sticks. Prisoner No. 2, also forcibly took from him Rs. 4 in cash and a small ornament a *mala*. The deceased added that he was returning home between 7 and 8 o'clock P. M. from the Dhooal Hat and had proceeded as far as the Trimohany of the Bhedeckally Khal, when the prisoners attacked him at the side of the Khal. His cries for assistance brought to the spot witnesses Nos. 1 and 2, who were passing by, also returning from the above Hat, and witness No. 3, who was in his house situated close by. The witnesses caused the prisoners to desist from beating him and

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they then went away, and witnesses Nos. 1 and 2, carried him first as far as one Kaloo Mundul's house, where they laid him down, while witness No. 2, went for assistance, and ultimately he was carried home. Prosecutor adds that his brother, the deceased, shortly after giving the above particulars, became very restless and wandering in his mind and ultimately speechless, but groaned audibly from the pain he was suffering. He rubbed on oil to the bruises on the body, which were about the chest, abdomen, shoulder and thigh, and applied heated sand. The deceased was offered water but could not swallow it. On the following morning, prosecutor informed the police, and the jemadar came to take his brother's deposition, but by that time he had become senseless, and the jemadar feared to have him removed and forwarded to the hospital as his state appeared so critical, it was dreaded, the mere moving him, might hasten his death. The deceased died about forty-eight hours after the asserted assault, during the most of which time he was in a state of torpor and insensibility, from which he never rallied. The prosecutor adds that the deceased did not mention the cause of the prisoner's assaulting him, but his own belief is, that the prisoner, No. 2, had long been incensed with deceased as he was a principal and confidential ryot of one Seetul Khansamah with whom the prisoner had a long standing enmity, and that, to satisfy his revenge against the deceased for supporting his adversary, he, with the other prisoners, assaulted him. The prisoner, No. 3, is brother to prisoner No. 2, and prisoners Nos. 1 and 4, his ryots.

The witnesses to the fact, Nos. 1, 2 and 3, all give their evidence in a straightforward fearless manner, in my opinion evincing a desire to assert nothing but what they personally knew, and expressing themselves in distinct and positive terms.

They assert witnesses Nos. 1 and 2, were returning on the evening of the 17th Phalgoon from the Dhooal Hat and had proceeded as far as the Trimohany of the Bhedeekally Khal when they heard shrieks of some one in distress. They ran to the spot, the cries apparently came from, and found prisoners, Nos. 1, 3 and 4, beating deceased with small round staffs, while prisoner No. 2, held him down on the ground by the neck. The above witnesses, at this moment, were joined by witness No. 3, who likewise heard the screams while in his house and came out to see what was the occasion of them. These three witnesses, all then fully agree in their testimony that they begged and caused the prisoners to desist from assaulting the deceased; that they recognized the prisoners distinctly as those now charged with the crime, they being close to and touching them to cause them to desist from the assault, and likewise knowing the prisoners from being village neighbours. Though the evening had closed in, the darkness was not intense, there being light

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sufficient to recognize distinctly the prisoners. The witnesses Nos. 1 and 2, then carried the deceased to a house close by, that of Kaloo Mundul's, where they laid him, witness No. 2, going for assistance and sending witness No. 15, and other parties to assist in bringing deceased to his house. These witnesses all saw that the deceased had been very severely beaten, but being dark they could not distinctly see the marks. They further assert the prisoners did not appear to be at all intoxicated, but quite sober, though evidently enraged. The witnesses did not learn from the deceased or from the prisoners any cause which might be ascribed for the assault, but are under the belief it may have been owing to the deceased being an influential person and a ryot and supporter in the quarrel of one Seetul Doss and the prisoner No. 2.

The circumstantial evidence consists of that of witness No. 15 (who corroborates the evidence of witness No. 2, having come to the deceased's house to report occurrence and demand aid, which he at once afforded by going to assist in bringing the deceased to his house) and of the witnesses Nos. 16, 17 and 18, all neighbours of deceased, who came on being called and heard the deceased give the statement detailed by the prosecutor. The witnesses on the inquest aver to observing several severe bruises on the body of the deceased, and the civil assistant surgeon, Dr. Palmer, states that on examination of the corpse he observed the viscera were in a perfectly healthy state, but that from bruises on the abdomen caused, he considers by beating with some blunt weapon, there was such hæmorrhage as would inevitably occasion death.

The prisoner No. 1, both before the police and the assistant magistrate of Magoorah, made an admission that he was present at the assault but only as a spectator, and that he saw prisoners Nos. 2, 3 and 4, attack and beat the deceased on the spot and at the time certified to by the witnesses Nos. 1, 2 and 3. He, however, pleads *not guilty* in this court, ignores his previous admission and sets up as his defence an *alibi*.

Prisoner No. 2, pleads *not guilty*, also that the charge is instituted out of spite against him, and that the probable cause of deceased's death is, that he and one Ramdhon had both enjoyed *criminal intercourse* with one Kalooy Mundul's wife, and that Ramdhon, out of jealousy, may have brought about deceased's death by the assault falsely ascribed to him. He further pleads an *alibi*.

Prisoner No. 3, pleads *not guilty* and sets up an *alibi* as his defence, adding that his witnesses will prove the charge is a false one got up out of spite.

Prisoner No. 4, pleads *not guilty* and an *alibi* in defence.

Of the witnesses cited by prisoner No. 1, ten in number, nine were in attendance at the court, six of whom the prisoner

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rejected, urging they had been tampered with, two gave evidence in no way establishing the defence, leaving only one, the prisoner's uncle, witness No. 25, who, in his deposition, asserts facts in support of the defence. The prisoner No. 1, has urged the court to cause the attendance of his witness No. 20, on the calendar as his absence is ascribed by the police report to sickness. Under the provisions of Circular Order, No. 302, Volume 1, the trial, with reference to prisoner No. 1, is postponed that the witness No. 20, may appear, as at present but one witness No. 25, has given any evidence in support of prisoner No. 1's defence. Of the twenty-four witnesses cited by prisoner, No. 2, fourteen gave their evidence, five were rejected by the prisoner, two reported dead, and three not to be found.

As it has been ruled (see Nizamut Adawlut reports, Volume 6, page 12) that witnesses for the defence must be examined, whatever the nature of their evidence may be, I give in the appended memo.* an abstract of the evidence of the above witnesses.

Some points are stated, not included in the defence set up by the prisoner No. 2, in this court, unless by inference.

These witnesses with the exception of Nos. 26 and 31, speak but in general terms.

Their knowledge of dates is generally very imperfect, and the remembrance of the date stated in their depositions ascribed to very improbable causes. Those who personally are aware of the deceased's dissolute habits, of his criminal connection with the wife of Kalooy Mundul and of one Ramdhon being likewise a paramour of hers, cannot state they are aware of any rumour even in their villages, of the deceased having met with his death in any other way than that described in the prosecution.

The witnesses cited by prisoners, Nos. 3 and 4, altogether twenty-four and twenty-three respectively in number, have

* Evidence that the assault on the deceased could not have taken place, on the spot and at the day and time asserted as witnesses were there and would have seen it, Nos. 27 and 28.

That prisoner No. 2, was in his own house at the time of the asserted assault, witnesses Nos. 26 and 31.

That deceased was a libertine and paramour of the wife of Kalooy Mundul, witnesses Nos. 27, 30, 33, 34, 37, 39, 40 and 41.

That one Ramdhon was also a paramour of the wife of Kalooy Mundul, witnesses Nos. 27 and 37.

That the charge is instituted out of enmity, witnesses Nos. 30, 33, 34 and 39.

That prisoner No. 1, was previously tutored to give the admission before the police, and the assistant magistrate, witnesses Nos. 33 and 34.

Saw deceased wounded at the house of Kalooy Mundul and his bruises being attended to by Kalooy's wife, witness No. 37.

mostly attended the court and given their evidence in support of the pleas in defence.

The *futwa* of the law officer declares prisoners, Nos. 2, 3 and 4, *not guilty* of the grave charge of the wilful murder, but guilty of *katl-shibah-ámd*, and liable to discretionary punishment.

I cannot concur in the *futwa*, for rejecting, as I do, the evidence for the defence, which I consider generally very imperfect and on most points, especially those in support of the *alibis* set up, very untrustworthy, I am of opinion the evidence for the prosecution being unimpeached, it establishes fully that the prisoners, Nos. 2, 3 and 4, are guilty of a cruel, deliberate and unusual attack on the deceased with malice aforethought, and that such severe blows were dealt by the above prisoner on the deceased while he was held down on the ground in a helpless state, as occasioned within forty-eight hours of his death. As all homicide is presumed to be malicious until the contrary appeareth upon evidence, and I see no grounds for inferring that the death of the deceased was caused by any injuries unlikely to have caused his death, I therefore submit the records for the orders of the Court of Nizamut Adawlut, and recommend a sentence of capital punishment on the prisoners Nos. 2, 3 and 4, and I do not see any extenuating causes which might be considered to palliate their guilt.

The officiating magistrate of Jessore has been requested to call the attention of the assistant magistrate of Magoorah, who prepared the case originally, to two omissions apparent on the record. The admission of prisoner No. 1, on the calendar was attested before the assistant magistrate by a witness who cannot read or write, and in the certificate of the confession, the hours noted are not specified as whether being A. M. or P. M.

Further remarks by the officiating sessions judge, with reference to the prisoner, Mohun Mundul.

In continuation of my letter of reference, dated 21st instant, No. 73, I have the honor to submit the trial, as regards prisoner No. 1, which was postponed, as mentioned in the above letter, with the view of causing the attendance of witness, No. 20, cited by the prisoner, who had been ill and unable to appear before the court on the trial being first taken up.

The witness No. 20, has since presented himself and given his evidence, but in no way to establish the plea of defence set up by prisoner No. 1. His defence is therefore supported by the testimony of only one witness, No. 25, who is his uncle. The prisoner No. 1, before both the police and the assistant magistrate of Magoorah, made an admission of his being present at the assault on the deceased, but only as a spectator. He ignores, however, now this admission, and pleads *not guilty* and an *alibi*.

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The *futwa* of the law officer convicts the prisoner No. 1, of *shibah-katal-ámd*, and awards discretionary punishment. As I cannot coincide in the *futwa*, and am of opinion, for the same reasons detailed in my previous letter of reference with regard to the other prisoners Nos. 2, 3 and 4, of the calendar, that prisoner, No. 1, is guilty of the charge of wilful murder, I therefore refer the case, with a recommendation that the sentence of death be passed on prisoner, No. 1, there being, in my opinion, no extenuating causes which could palliate the crime of which I consider the prisoner No. 1, guilty.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The evidence of the three eye-witnesses to this assault has been considered by the judge sufficient to prove the offence charged against the prisoners, that evidence seems in every respect trustworthy. The witnesses having stated all the facts witnessed by them promptly and in a consistent manner at the different stages of the investigation. Their presence is moreover admitted by the prisoner Mohun Mundul No. 1, in his confessions to the police and to the assistant magistrate.

We hold it fully and satisfactorily proved, by this evidence, that the prisoners, acting in concert, assaulted and beat the deceased to such a degree that his death ensued in forty-eight hours afterwards.

But we see no reason for concluding that the prisoners contemplated or intended to take the life of the deceased.

There was apparently a party-quarrel between them and the deceased's master, in which the deceased had taken part, and the strong probability is, that the prisoners wished to punish deceased for some assistance he may have given his master by a severe beating.

To this extent we consider the prisoner's intention fairly presumable; and as they would appear to have premeditated the assault, and death has ensued therefrom, they are guilty of culpable homicide; and as the assault was both violent and deliberate we sentence them all to ten years' imprisonment with labor and irons. We remark that the *post-mortem* examination shows the blows were dealt on the body only, and not on such vital parts where they would have been more likely to prove fatal.

PRESENT:

H. T. RAIKES, Esq., *Judge* AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND HURIE MANJEE

versus

MEEROO MOODEE CHOKEEDAR (No. 1,) SHEIKH HEROO ALIAS SHEROO MOODEE (No. 2,) PERMANUND DOSS POTDAR (No. 3,) SHEIKH SHOOBUL MUNDUL (No. 4,) HURSOONDUR ACHARJEA (No. 5,) GUNGARAM SIRCAR (No. 6,) NUNDRAM MALEE (No. 7,) AND SHEEBOO MALEE CHOKEEDAR (No. 8.)

Mymensingh.

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Case of MEEROO MOODEE and others.

Prisoner charged with wilful murder convicted, in agreement with *futwa* of the law officer in the zillah, as opposed to the finding of the judge, of culpable homicide, as the proof relied on by the latter, as showing that he was the identical party who inflicted the fatal blow on deceased, was deemed insufficient.

CRIME CHARGED.—Wilful murder of Pudoo Manjee.

Committing Officer.—Mr. W. Cockburn, deputy magistrate of Jumalpore.

Tried before Mr. W. T. Trotter, sessions judge of Mymensing, on the 24th April, 1856.

Remarks by the sessions judge.—It would appear that owing to a dispute existing between the deceased's land lady Sheeb Soonderee Dashee and prisoner No. 3, regarding a certain *jote* which No. 3 held under her, and also on account of prisoner No. 4, establishing a *haut* close to hers at Hautberriah and also owing to her ryots, the deceased and others, not attending to No. 4's *haut*, the prisoners riotously attacked the house of one Goluck Manjee, witness No. 4, on the morning of the 22nd December last and on the deceased coming out of the house and calling out *dohaie*, prisoner No. 3, ordered him to be beaten and prisoner No. 1, struck him a blow with a spear on the chest; that on receipt of the wound, the deceased ran to a distance of about fifty cubits where he was followed by the other prisoners and beaten to death.

Before the deputy magistrate the prisoner No. 1, denied the charge and pleaded that he has been charged by the villagers out of enmity, as they discharged him from the office of Chowkeedar and that some Sirdars on the part of prisoners Nos. 3, and 4, killed the deceased. In this court he adhered to his denial, but stated that he was not aware as to who killed the deceased, and called no witnesses to his defence.

Baboo Mohunund Mookerjee sub-assistant surgeon, who held a *post mortem* examination on the deceased's corpse, deposed that death was caused by an injury of the heart and hæmorrhage consequent thereon, there having been a penetrating wound on the left side of the chest between the fourth and fifth ribs passing right through the heart, and that there were other marks of violence on the deceased's corpse, viz. contused wounds

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on the back, upper and lower limbs as if inflicted with blunt instruments such as *lattees*.

The law officer convicts the prisoner of culpable homicide and considers him liable to punishment by *accoobut*. I concur in this finding.

I look upon the attack on the deceased to be of an aggravated nature, and the evidence against the prisoner is so very clear and consistent as to leave no room for doubt. Witnesses Nos. 1, 2, 4, 5, 7 and 8, clearly depose to having seen the prisoner strike the blow with the spear on the chest, which penetrated the heart, and I consider that he should be subjected to a much more severe punishment than the rest, he is moreover a chowkeedar and should, instead of heading a riot, have done all in his power as a police officer to prevent it. I therefore recommend a sentence of fourteen years' imprisonment with labor and irons being passed on him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) The same evidence on which the sessions judge and the *futwa* of his law officer has convicted the other prisoners Nos. 2 to 8, fully establishes the part which this prisoner took in the attack on the house of Goluck Manjee, and on the deceased, when making his exit from it; but we agree with the law officer in considering that the statements of the eye-witnesses are not sufficiently in unison to bring home to this prisoner the fact of his being the party amongst the assailants, who inflicted the spear-wound on the body of the deceased, which is deposed to by the medical officer as having been the cause of his death. We remark for the information of the sessions judge that if we had taken the same view of the evidence as he has done, we should have held the crime, which was established against the prisoner, to be that of wilful murder; as had it been fully proved that he inflicted the deadly wound by running the spear through the heart of the prisoner there could have been no doubt of his intent. Under all the circumstances of the case, as we think the evidence insufficient to convict this prisoner of a more grievous crime than that which has been established against the other prisoners, we sentence him to a like period of imprisonment. The other prisoners were sentenced by the judge to seven years' imprisonment with labor and irons and have appealed, but with reference to the foregoing remarks, we see no reason to interfere with their sentences.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

ROMACANTH CHUTTOPADHIA.

West-Burdwan.

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Case of ROMACANTH CHUTTOPADHIA.

Prisoner charged with wilful murder of a woman, the mother of his former concubine, acquitted, as the proof against him rested on the evidence of a Chowkeedar who deposed that he had detected him in the act, but which evidence was not trustworthy.

CRIME CHARGED.—Having, on the night of the 9th May, 1856, corresponding with the 28th Bysack, 1263, B. S., committed wilful murder of Kalee Kulonee Bustobee and her daughter, Gopee Kulonee.

Committing Officer.—Mr. H. Rose, officiating joint-magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West-Burdwan, on the 10th June, 1856.

Remarks by the sessions judge.—The murder was, in fact, committed at 3 A. M. on the 10th of May, 1856, though the calendar, in accordance with native custom, states that it took place on the night of the 9th. The principal witness, viz.: Chidam Roy Chowkeedar, No. 6, when examined by the phandeedar of Rajgaon, on the date first above mentioned, gave the following main deposition.

I was on my beat, to the westward of the deceased woman Kalee Kulonee's house, at about three *puhurs*, when I heard her call out "Romaie thakoor (the prisoner) is cutting (or killing) me," I ran towards her, and, when I got near her house, saw Romaie fly, with a naked sword in his hand, towards the east, I instantly made outcry, and pursued him. He first ran towards the *bandh*, or tank of the Dutts, and then northwards, to the Ghurbash *bandh*, and got over the Pushtah thereof, to his house, which he entered. After a little time, the phandee burkundaz, Sheikh Khooshal (witness No. 2,) with Kartick Ghatwal and others, came to me, and, after I had told them what had happened, we went together, to the prisoner's house. The burkundaz called to the prisoner, who answered, and thereafter came out. He spoke indistinctly and was confused. I said to him, So you have killed Kalee Kulonee and come here, have you? He made no answer. The phandeedar then sent him to the thannah, in charge of the Ghatwals. No one but I, saw Romaie, and I thought I perceived two or three other persons flying beyond him, I recognised the prisoner about a *russee* off. He had the deceased, Gopee Kulonee, for a concubine, during ten or twelve years, but, about a year back, gave her up and took some cattle away from her, upon which her mother, the deceased, Kalee Kulonee, brought an action against

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him in the foujdary court, hence there was enmity between him and the deceased woman. They had no other enemy in the place. I slept at the house of Kalee, and in the *verandah* of Gopee, before I went my rounds. They were then asleep. Gopee had no other paramour but the prisoner, and no one had been in the habit of visiting her, since he gave her up. Besides all this, deponent described the finding of the bodies and the *sooruthals*, &c.

The deposition of the same witness, before the officiating joint-magistrate, was, in all principal respects, the same, but he added, that when he first saw the prisoner, the latter was running out of the house of Russick Tantee; (close to the *tattee* door of which the body of Kalee was afterwards found;) that, when he saw him, he cried out to the neighbours to come out, because Romaie had cut Kalee, and was running away; that he lost sight of the prisoner when he got to the top of the Ghurbash *bandh*, and began to call for assistance to the Ghatwals and others; that the persons, who came with the burkundaz and Kartick Ghatwal, were Khooroo Roy Ghatwal and Rammeye Chowkeedar; that when the prisoner came out of the house, he had on a small cloth; that when the burkundaz told him he must go to the phandee, he went inside and put on a large long one; that the prisoner had asked him whether any one intrigued with Gopee, since he left her; that he had said not to his knowledge, and that the prisoner had then called her a *sallee* and threatened to cut her to pieces. This witness's examination in chief, before the sessions court, was mainly the same, but further set forth, that none of the neighbours dared to appear, when he called out to him that Romaie had cut Kalee Kulonee and was making off; that he was only four or five cubits from prisoner, during the pursuit to the Ghurbash *bandh;* that he saw two other persons flying beyond him, but could not recognise them; that the prisoner's house was near the above *bandh;* that he cried out to the Ghatwals to come and help him, because Romaie thakoor had committed murder; that when the burkundaz came up, he told him that Romaie had cut Kalee Kulonee and fled to his home; that, when the prisoner answered the burkundaz's call, he seemed to be standing close inside the *tattee* which formed a substitute for a door; that the prisoner said he must get clothes, if he was to go to the phandee; that the *sooruthal* was made by the phandeedar on the morning of the 10th May; that the prisoner's new concubine was called Rookinee Morialee; that the prisoner sometimes asked him whether Nuddiarchund Bystom and Kalee Roy visited Gopee; and that he was sure the prisoner had murdered the deceased women. When cross-examined by the court, he said, that, when he deposed to having seen the prisoner run out of Russick Tantee's house, he meant, out of the

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enclosure in front of it; that he had mentioned the change of clothes, made by the prisoner when about to be taken to the phandee, in his mofussil deposition, and that the phandeedar must have omitted to put it down; that his said deposition was taken by the said phandeedar, on the roadside in Bagsalla (the mohullah of Rajgaon in which the murder took place,) near the house of Gossain Doss Tantee, and on the morning on which the corpses were found; that the prisoner's house was about 100 yards from the northern bank of the Ghurbash *bandh;* that it could be seen from thence, there being only a few trees between; that the road from Kalee's house to the said *bandh* described a curve, and was followed by the prisoner; that he recognised the prisoner so immediately because he had been a Ghatwal, and was a resident of the village, and he ran only five or six *haths* in advance of him; that the night was dark, but did not preclude recognition, under the circumstances; that he did not follow the prisoner after he had got to the top of the *pushtah*, or bank of the *bandh* because he feared him, the place was dark and dangerous, and the Ghatwals had not come up; that he was only able to say "Romaie Katilek," when he called out from the *bandh*, because he was out of breath and flurried; that the phandee was about 150 yards from the top of the *pushtah;* that no one was present when the prisoner told him he would kill Gopee; that he did not positively say he had seen the prisoner enter his house, when examined by the phandeedar; that he had told him of the threat to kill, previously made by the prisoner, but he had omitted to put it down; that he had no personal enmity against the prisoner nor any quarrel with him when he was a Ghatwal; that Kalee Roy, witness No. 23, (accused by prisoner of having got up the case against him, after murdering the women himself), was *talookdar* of Bagsalla; that he did not see him near, when the prisoner fled; that he did not hear him make any remark, next morning; that the said Kalee's house is about a quarter of a mile from that of Russick Tantee; that the latter has a window, with wooden shutters, and a *tattee* in lieu of a door; that he was with the darogah when the boy Bonomalee, witness No. 1, was brought to that officer; that his mother had previously appeared with a child in her arms, and, on being asked whether she had any more, said, two, one of whom was away, with Beoparees, and the other at home; that upon that the darogah sent a Ghatwal to bring him; that when Bonomalee arrived, Kalee Roy was sitting in the *mujlees* or assembly, and had been so when the Ghatwal was sent; that he did not know whether Kalee Roy had ever been in trouble; that the individual in question was a young man, who had no wife, but a son and a concubine who lived in a separate house; that the sword laid before the court was the property of the prisoner; that it had

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no scabbard when he knew it; that he had seen it in the prisoner's hands, and been present when it was found in his south-doored house; that there were no sword sharpners in Rajgaon, but in Bancoorah; that Bonomalee, witness No. 1, pointed out the prisoner (as the person who had slain Kalee Kulonee), in his presence, when asked to do so by the darogah; that he (deponent) was not actually standing at prisoner's door, when the burkundaz came to him, but near it, on the *pushtah* of the tank; that he did not sleep at the house of Kalee, before he went on his rounds, and never said so to the phandeedar; and that the darogah came on the day after the murder (i. e. on the same day, according to European notions) when asked, by the prisoner, whether he had not seen the darogah send away Bonomalee, witness No. 1, on the first day, and examine him on the next, he replied in the negative.

The mofussil evidence of all the other witnesses for the prosecution, that of the prisoner's concubine, Rookinee, excepted, fully supported that of the chowkeedar. It was as follows.

Bonomalee, witness No. 1, a very intelligent boy of about 8 years old, who was examined on the 11th of May, stated, that he was sleeping in the house of Russick Tantee, on the night of the murder; that he heard Kalee scream out that Romaie (the prisoner) was killing her; that he ran close up to the house; that he then saw through a chink of the *tattee* which served for a door, the prisoner cutting her with a sword; that being much frightened, he remained silent, and did not see in what direction the prisoner fled; that, upon that, Chidam Chowkeedar began to call out, that Romaie had cut Kalee Kulonee and gone off, and called the neighbours to his assistance, without success. At the end of the mofussil deposition of this witness, the darogah mentioned, that he pointed out the prisoner, among a number of people, as the person whom he had seen cutting Kalee.

Sheikh Khooshal, witness No. 2, videlicet the phandeedar burkundaz, gave nearly the same account as the Chowkeedar, of what happened after that witness reached the top of the *pushtah* of the Ghurbash *bandh*, particularly mentioning that he cried out "*Romaie Kalee Kulonee ke katia gelo*," and that, when the prisoner was told he was wanted at the phandee, he went inside and changed his small cloth for a *dhotee*.

Chidam Morelee and Nufferdoss Bustob, witnesses Nos. 3 and 4, deposed that they heard Kalee call out that Romaie was killing her, and that the chowkeedar said, the prisoner was running off after killing Kalee; that when the Bukshee came, the corpses were found; that Gopee had been the prisoner's concubine for a long time; that he had discarded her and taken her cows; and that he had therefore been on the worst terms with her and Kalee.

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* No. 7, Ridoy Bustob.
,, 8, Nuffer Dallal.
,, 9, Nudiarchand Bustob.

The witnesses named in the margin* gave nearly the same evidence as the above.

† No. 10, Audermony Tantin, mother of Bonomalee, witness No. 1.
No. 11, Mugun Tantin.
,, 12, Sreechurn Tantee.
,, 13, Sreemunt Tantee.
,, 14, Kaleechurn Tantee.

The witnesses in the margin† heard the deceased, Kalee Kulonee, cry out "Romaie Katilek re," and the Chowkeedar exclaim "Romaie *katia gelo*," No. 12, added, that after Kalee was silent and before the Chowkeedar called out, he heard the prisoner say, that *he must see where that Salinee Gopee had run to.* (This appears to be an invention of his own, for none of the other witnesses mentioned it.)

Bhaugbut Hish, witness No. 15, heard the Chowkeedar running along the road, crying out "Ramaie *maria katia gelo re*," saw a person of small stature flying before him, and thought from the chowkeedar mentioning Romaie, that it must be he.

‡ No. 16, Gossaindoss Tantee.
,, 17, Bulliedoss Tantee.
,, 18, Hirachund Podar.

The witnesses in the margin‡ heard the chowkeedar cry Romaie *katia gelo*, and declared their knowledge of the enmity which had subsisted between the deceased women and the prisoner.

§ No. 19, Sham Lukhun.
,, 20, Narain Nundy.
,, 21, Nufferdey Tantee.

The witnesses in the margin§ having heard the chowkeedar cry, "*katilek re, katilek re*," questioned him (on his return) and were told that Romaie had killed Kalee Kulonee; these persons also said that they were aware of the enmity above alluded to.

Bullie Chowkeedar, witness No. 22, heard the chowkeedar cry out, "Romaie *katia gelo*;" Kalee Roy witness No. 23, the talooqdar of Bagsalla, heard from the chowkeedar, immediately after the occurrence, that the prisoner had killed Kalee Kuloonee, and was present at the *sooruthal*. Of the above witnesses, the boy

Depositions before the joint-magistrate and sessions court.

Bonomalee No. 1, repeated his mofussil deposition before the joint-magistrate, but denied it, *in toto*, before the sessions court, alleging that Kalee Roy, witness No. 23, and the darogah had forced him to give it. On his being carefully cross-examined and questioned by me, it became clear that this allegation was false, for he contradicted himself grossly in regard to the place in which he had been instructed, and said that he was taken to the darogah, by the above individual, *on the day of the discovery of the corpses, viz, on the* 10*th of May*, whereas the record shewed, that he had been examined on the 11th. If the chowkeedar's answers to the questions of this court be referred to, it will be seen that Kalee Roy could not have brought the witness to the darogah,

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and his averments are, more or less, supported by those of Kalee Roy himself, Nuffer Dallal, witness No. 8, and Nuddiarchund Bustom, No. 9. It will also be seen that all these witnesses, with the exception of No. 8, saw Bonomalee point out the prisoner to the darogah, as the person who had killed Kalee. Although I could, under such circumstances, have committed the boy for perjury, I refrained from doing so, in consequence of his tender age, and the probability of his having been subjected to much mental pressure, before he was induced to falsify his mofussil statements.*

* The tears .ept streaming from his eyes during the whole time of his examination in the sessions court, but he was quite collected.

Khooshal Sheikh, Phandeedar burkundaz, witness No. 2, gave nearly the same deposition before the joint-magistrate, as in the mofussil, adding that, when he saw the prisoner at the phandee on the 10th by daylight, he had on a large *dhotee;* that he did not recollect what cloth he had on, when he left his house; and that the latter was searched before sun-rise. Before this court he affirmed that the chowkeedar, when on the top of the *poshtah,* cried out, "*katilek,*" "*katilek,*" only; that when he got to him, with Sooroop Roy, Fuqueer Suddial, and other *ghatwals,* he was standing at the prisoner's door; that, when questioned, he said that Romaie had killed Kalee Kuloonee, and that he had pursued him to his house; that when the prisoner came out, he had a small cloth on; that he sent him to the Phandee, in charge of the *ghatwals,* with the said cloth; that when he questioned the prisoner about the murder, of which he was accused, he denied all knowledge of it; that deponent afterwards accompanied the chowkeedar and mohurir, in their search for the body of Gopee, &c.; that when he got back to the Phandee, he found the prisoner wearing a long broad cloth, and that, when he asked the *ghatwals* where the small one was, they said that the prisoner was wearing *the very one, in which he had been apprehended.* When cross-examined by me, he affirmed, that he had never, said that the chowkeedar called out, "*Romaie Kalee Kuloonee ke katia gále,*" when examined in the mofussil, and thathe was not answerable for what the Phandeedar mohurir wrote. He could not give any satisfactory explanation of the discrepancy about the prisoner's clothes, but tried to make out that it was only apparent and had been caused by the writers of his depositions.

Chidam Morelee, witness No. 3, deposed to the same effect, before the joint-magistrate and sessions court, as he had done in the mofussil, but added, that the deceased woman, Gopee, had had no other paramour than the prisoner; that thirteen rupees and two four-anna pieces had been found on the body of Kalee; and that, although the prisoner had once burnt his house down, he had ceased to bear any malice against him for the deed.

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Nufferdoss Bustob, witness No. 4, left out the name of Kalee Kuloonee, in his deposition, in chief, before the sessions court, and, when asked why he had done so, got confused and made contradictory statements. He is a very old weak looking man.

Ridoy Bustob, witness No. 7, gave consistent evidence throughout. In answer to a question of the prisoner's Mokhtear, in the joint-magistrate's court, he denied that Kalee Roy, witness No. 23, had had any intrigue with the deceased Gopee Kuloonee. In answer to particular questions put by me, he stated that the place, where the body of that woman was found was a retired one, away from the road, and about two hundred yards from Kalee's house; that three or four of the brick kilns or squares, there, were high, and therefore available for concealing persons, wishing to converse in private; and that he was not aware of any enmity between Chidam chowkeedar, witness No. 6, and the prisoner. When questioned by the latter, he denied that he (deponent) was a bad character, and that he had any quarrel with the prisoner.

Nuffer Dallal, witness No. 8, deposed consistently all through, but said, in the joint-magistrate's court, that the witness Kalee Roy, No. 23, had some times visited the house of the deceased Gopee. When cross-examined and questioned by me, he stated that Kalee Roy sometimes went to Gopee's in the day time, and sometimes in the evening, he did not know on what account; that he was the proprietor of Bagsalla; that he (deponent) had no connexion with the prisoner; that Russick Tantee (the owner of the house near which the body of Kalee Kuloonee was found) was absent, with *beeparees,* when the murder took place; that the northern *poshtah,* or embankment of the Ghurbash *bandh,* on the other side of which the prisoner's house was situated, was continued beyond the tank, to the east and west; that it was high enough to hide a person on the north, from another standing on the south thereof; that the prisoner's house was about a *russee* and a half to the north of the said *poshtah,* that there was no obstacle in the intervening space, but a few trees; that there was a curved road, or path, from the *poshtah* to Kalee Kuloonee's house, which, however, might be reached, more directly across the *khets ;* that there was no jungle on either side of it, only a few trees; that there were dry hollows, or *dobas* here and there; that the place of the brickkilns was suited to private conversation; that the corpses of Gopee and Kalee were fully clothed; that the former had her usual common ornaments on; that thirteen rupees and two *seekhees* were found on Kalee's person; that he was unable to say whether Kalee Roy had had any intrigue with Gopee; that that individual's house was about half a mile from hers; that he (deponent) was in the darogah's *mujlis,* when the boy, Bonomalee, witness No. 1, was brought; that the mother of the said

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witness was present when he was brought; that he did not see with whom he came; that he did not recollect seeing Kalee Roy there; and that he did not see what Bonomalee did, because he sat outside the assembly. To questions put by the prisoner he replied, that he had turned his sister out of doors, because she became pregnant, he did not know how; that he was a ryot of Kalee Roy; that he was present when Chidam chowkeedar's evidence was taken, that Kalee Roy was there; and that he could not recollect the date of the deposition.

Nuddiarchund Bustob, witness No. 9, told the same story before the joint-magistrate and sessions court, as he had done in the mofussil. When cross-examined and questioned by me, he exactly supported the account given by Chidam Chowkeedar, witness No. 6, of the way in which the witness Bonomalee, No. 1, had been sent for by the darogah, and deposed to what he did, and to the presence of Kalee Roy when he was brought, in the same terms. He moreover stated, that that personage had no intrigue with the deceased, Gopee; that he never saw him visit her house; that his, deponent's, hut was about a *russee* from Kalee's, and Kalee Roy's half a mile; and that he was not aware of there being any enmity between the last named individual and the prisoner. To questions of the prisoner, he replied, that he had been punished by the law officer, in a certain case, but not on evidence given by the prisoner; that he got off in appeal; that he did not know whether Kalee Roy was present, when the chowkeedar's mofussil deposition was taken; that he was not aware of that individual having been imprisoned in any case, nor of the darogah having taken away Bonomalee and his mother, the day before (10th May) without examining them. This witness was himself committed for child-murder, on the 5th January, 1856, and was acquitted by me, for want of proof on the 11th March following. His evidence was, throughout, very clear and distinct.

The depositions of the witnesses in the margin,* before the joint-magistrate and sessions court, did not agree with those which they gave in the mofussil. No. 10 left out the name of Romaie, in her account of Kalee's exclamations, in the foujdary court, and denied having heard her exclaim at all, before the sessions court, though she acknowledged that the chowkeedar had said, "*Romaie katilek,*" on the former occasion, and, "*Romaie thakoor Gopee, or Kaleeké katilek,*" on the latter. As the discrepancies in the depositions of the other witnesses here named were of a similar nature, they need not be detailed.

* No. 10, Audermony Tantee.
,, 11, Mugun Tantee.
,, 12, Sreechurn Tantee.
,, 13, Sreemunt Tantee.
,, 14, Kaleechurn Tantee.

Bhaugbut Hish, witness No. 15, added the name of Kalee Kulonee, to the exclamation of the chowkeedar in the foujdary

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and sessions courts, and, on being cross-examined, declared that he had said the same in the mofussil. He also added, in the former court, that he had seen some one else running ahead of the prisoner, but could not recognize him, and, in the latter, that he thought the person flying before the chowkeedar *was like Romaie.* To questions of the prisoner, he answered, that he had come to Rajgaon from Bishenpoor, two-half years ago, and that the prisoner had never rebuked him, when on his beat, nor prevented his going out at night.

Gossaindoss Tantee, witness No. 16, deposed consistently throughout, and so did Bullie Doss, witness No. 17, but did not hear the name of Kalee Kulonee mentioned by the chowkeedar.

Hirachand Potdar, witness No. 18, who had described the chowkeedar's cry as "*katia gáloré,*" in the mofussil, added the name of the prisoner to it, before the joint-magistrate and sessions court. When cross-examined by me, the same witness averred that his mofussil deposition was the correct one, and denied that he had mentioned the name of the prisoner.

The depositions of the witnesses named in the margin,* were consistent on all three occasions, No. 19, when questioned by me, stated, that the house of the prisoner's concubine, Rookinee, in which he was captured, was only 10 or 12 cubits from his own, and about two *russees* from the northern *poshtah* of the Ghurbash *bandh.* To questions of the prisoner he replied, that his own house was to the south of the *bandh,* and that of the prisoner in Semooldanga, to the north thereof; and that Kalee Roy was once apprehended by the latter, for a nocturnal intrigue. No. 21, when questioned by the prisoner, stated, that the house of the latter was not in Semooldanga, but on one side of it, and that he did not know of any enmity between him and Kalee Roy.

* No. 19, Sham Lukhun.
,, 20, Narain Nundy.
,, 21, Nuffur Dey Tantee.

Bullie chowkeedar, witness No. 22, deposed consistently throughout. To questions put by me in regard to what Chidam Chowkeedar did on the *poshtah,* distances, &c. he answered in confirmation of the evidence previously given by others, and supported the chowkeedar's statements, saying that he was not aware of any bad blood between him and the prisoner; when questioned by the latter, he denied that Chidam had ever left his own *mohullah,* to visit and converse with him.

Kalee Roy, witness No. 23, deposed with perfect consistency throughout, and as before stated, when questioned by me, supported all that the chowkeedar had disclosed, in regard to the way in which the boy, Bonomalee, was sent for, what he did, what his mother, Andermony, then said, &c. His father's statements were, that he had not brought Bonomalee to the

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darogah; 'that he had no enmity against the prisoner;' that he never was apprehended, nor taken to the Phandee by him; that he was once asked by him, why he was out so late at night; that he had resented the question; that the road to his house, at Damoodurpoor, does not go towards the east, from the house of the deceased, Kalee, but towards the south. To questions put by the prisoner, he answered that he had twice been imprisoned, viz. once in a case of affray, and once for fornication *(fylshunnia)* and that prisoner's house was searched at about 8 o'clock on the morning of the 29th of Bysack, or 10th of May.

The concubine of the prisoner, Mussamut Rookinee, sent for by me, had of course been instructed, by his mokhtar, to support his proposed defence, and did so, in the chief part of her examination, but further stated, that she was with the prisoner when he was apprehended, about the time mentioned by the chowkeedar; that the sword, before the court, was his; that she had heard him say it wanted sharpening, about a year ago; that it had been taken from the house, when it was searched by the police; that neither she nor the prisoner had had any quarrel with the deceased women, &c. It was remarkable, that when she came to that part of her story which described the departure of the prisoner for the Phandee, she pointedly and of her own accord, said, "*and he went in the clothes he had on.*"

The deposition of the civil assistant surgeon, Dr. Cheek, was a painful detail of the most cruel and severe wounds found on both bodies, various of which must have caused instant death. He was of opinion that they might all have been inflicted by the same weapon, and that the sword, before the court, might have been used. On this head, he remarked, that he had, at first, thought the weapon must have been heavier, but that the extreme sharpness of the sword, produced, had made him change his opinion. He added that the younger woman, Gopee, was good looking, and that all the wounds appeared to have been inflicted about the same time. In the course of his examination, he shewed me two portions of bone, which had been shorn off the skulls of each of the deceased females, by the very sharp edge of whatever weapon might have struck them.

The sword weighs a little less than eleven *chittacks,* and is a rather small, but very handy weapon, of hard steel, lately ground to a very sharp edge, from hilt to point. On examining it with the naked eye, and a strong lens, there can be no doubt of its having been used to strike something, *since it was sharpened,* for there are many marks, chiefly on the upper half of the blade where the wire edge, or extreme trenchancy, has been turned, by something not hard enough to notch, or make any further impression upon it. The record shews that the darogahs of Bancoorah and Chatna, who reached the spot, by

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order of the joint-magistrate, on the day of the murder, had search made in all tanks, and other quarters for any other *lethal* weapon, without success. Before taking the prisoner's defence, I had a fresh search made, with more care, and endeavoured, through the joint-magistrate, to find out who had sharpened the sword, found in the prisoner's house, but without further results.

On going through the thannah records, I found that, although the primary proceeding of the phandeedar and his burkundaz, as above detailed, had been marked by stupidity, or something worse, the darogahs were on the spot, as soon as possible, and conducted the rest of the investigation in a prompt and intelligent manner; that the magistrate and his assistant both visited the localities; and that the darogah of Chatna, vide his report of the 13th of May, was of opinion, that the neighbours had all determined to be as silent as possible, because the prisoner was a Brahmin, and they were afraid of giving such evidence as might lead to his death.

The prisoner's defence which was nearly the same as that advanced by him in the foujdary court, was, that Kalee Roy, Cheedam Chowkeedar, and the witnesses, Nuddiar Bustum, Ridoy Bustum, and Nuffer Dallal, who were all his enemies, and persons of bad character, had conspired to fix him with the murder of Kalee and Gopee Kulonees; that there was a case, in the records of the criminal court, which would prove that all the above persons were his enemies; that he had relinquished the deceased, Gopee, because he found that Kalee Roy, Judoo Haree, and others, were in the habit of visiting her; that he had given five cows to her, on the intercession of certain respectable persons, and kept four; that Kalee Kulonee's foujdary action, for the latter, had been instigated by Kalee Roy; that the sword, before the court, was his, and had been placed by him in the house of his concubine, Rookinee; that, on the evening of the murder, he went to the house of his uncle, Gooroochurn Serma, who was preparing a feast for Brahmins, which was not over till half-past 12 at night; that he then returned to Rookinee's house, with Sooi Jooriath, witness No. 28, who was his brother-in-law; that they went to sleep there; that, after that, the chowkeedar and a ghatwal, whose name he did not recollect, came and told them to be on their guard, because thieves had entered the neighbouring mohullah; that, subsequently, the burkundaz of the phandee, with Kartick and others, called him (prisoner,) saying that the mohurrir wanted him; that he, having been a ghatwal, thought he was sent for to be asked about the thieves; that, when he got to the *phandee*, the mohurrir was not there, and that he was told to sit down and wait for him, which he did.

During the trial in the foujdary court, the prisoner filed a

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petition in which he accused the witness, Kalee Roy, No. 23, of having killed the deceased women, himself, with the intention of getting him into trouble; and that he was colluding with the darogah against him.

His witnesses named in the penultimate column of the calendar, all depose to his having gone from his uncle's to Rookinee's house, at half-past 12 o'clock, but none could shew that he could not have left it again for the purpose of slaying the deceased women. The witnesses in the last column gave him a good character.

On perusal of the two separate records, viz.: that of the cattle abduction case, between the prisoner and the unfortunate Kalee Kulonee, which had not been decided when she was taken off, and that of his dismissal from his appointment of ghatwal, it came out, that the said cattle-case was instituted on the 15th of March, 1856, and last heard on the 6th May, or three days before the murder, and that the prisoner was dismissed on the 5th May.

The *futwa* of the law officer convicted the prisoner of the wilful murder of Kalee Kulonee, on violent presumption, and declared him liable to *seasut.*

I mainly concur in this finding, for the following reasons. Notwithstanding the early age and *manifest perjury* of the only eye-witness of the murder, to wit the boy, Bonomalee, all the circumstances of the case *combine* to show, that his mofussil deposition, repeated before the joint-magistrate, *must have* been true. The woman Kalee, was found lying dead within a yard of the *tattee* of the house in which *he* was at the time; she could only have been pursued, to her death, by a person whom she knew, for it is not at all likely that an assassin could have been hired, to destroy so helpless a female. If she knew the person, she must obviously have named him, while receiving repeated blows and calling for assistance. If she did, she must have been heard by the witnesses, for many other persons have solemnly declared, that she *did* name the prisoner as her destroyer, and that they heard her do so, from some distance. The chowkeedar Cheedam was also heard to name the prisoner, when he ran off towards the east, and he has solemnly declared, that he met the prisoner coming out of Russick Tantee's compound. The same witness was first found, by the phandee burkundaz on the top of the *poshtah* opposite the prisoner's house and the prisoner was panting and agitated, as if by exertion, when seized. Under all these circumstances, it is clear to me that if the boy said in the mofussil that he had seen the prisoner kill Kalee Kulonee, and then repeated the allegation before the joint-magistrate, there is, at least, every probability of the same having been true, and weight ought therefore to be given to it, notwithstanding his having subsequently perjured himself in the sessions court.

If it be urged that the night, or rather early morning, was too dark for *recognition*, I answer, that the prisioner is more easy to recognise, in a dubious light, than another man, because his hair is grey, his complexion light, and his stature short, besides which, he was within a yard of the witness, to whom his name had previously been imparted, by the cries of his unfortunate victim. The same reasons may be given for believing the mofussil depositions of all the other witnesses, who deposed discrepantly, instead of those which they afterwards gave in the foujdary and sessions courts. Should it even be thought necessary to discard the evidence of Bonomalee and the above persons altogether, there still remain the clear and unexpugnable evidence of the Chowkeedar, Chidam, witness No. 6, and the witnesses, Chidam Morelee, Ridoy Bustob, Nuffer Dallal, and Nuddiarchund Bustob, Nos. 3, 7, 8 and 9, with the circumstances of the case, to support conviction.

These circumstances are of damning force. The Chowkeedar was heard to call out, immediately after Kalee had expired with the prisoner's name on her lips, that he was flying after having killed her; the Chowkeedar was heard to pursue some one in the direction of the prisoner's house; he was heard, by the phandee people, screaming from the *bandh* within one hundred yards or so of the said house, that the prisoner has committed murder, the prisoner was called out, almost immediately afterwards, and came forth panting and unable to speak; the phandee burkundaz deliberately permitted him (*the brahmin and late police officer*) to change his clothes; he was not asked for his sword, with which he had been seen running by the chowkedar; the phandeedar never thought* of asking or looking for it until the prisoner's concubine had had ample time to remove every speck of blood from it, the sword itself had evidently been new-sharpened, from hilt to point, and, yet, bore marks of blows on its edge; the civil assistant surgeon deposed that it was just the sort of weapon to have inflicted the wounds, found on the corpses of both the murdered women and that said wounds appeared to have been inflicted all at nearly the same time, and by the same weapon; both the women were found with their clothes and ornaments on, at three in the morning, and Kalee with money on her person, the prisoner was the only enemy the women had in Rajgoan, he had been heard to threaten one of them, with being cut to pieces, and both were found hacked all over with sword-wounds; the dispute he had with them had not been decided, and had been heard by the law officer only three days before the murder; the prisoner had been turned out of his appointment four days before that event, and must, consequently, have been in the worst humour; his witnesses said nothing to exculpate him, and his accusation of Kalee Roy and objections to the

* Ostensibly.

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witnesses, Nuddiarchund and others, were evidently uttered because he knew that their evidence would completely support that of Chidam Chowkeedar.

I beg to add that the reasons given for Bonomalee at once recognizing Romaie, though it was night, equally explain his immediate recognition by the Chowkeedar; that if the averments of the latter are true, and there is no reason whatever to doubt them, supported as they are, the prisoner could not have thrown away the sword in his flight, not even into the tank below the *poshtah*, for such an act would clearly have led to his apprehension, nor could he have sent it away during the night nor hidden it, because the chowkeedar was aware that he possessed it, and it was sure to be asked for; I may moreover observe, that there are circumstances in the case which lead to the belief, that the prisoner must, first have inveigled Gopee to the brickilns by some wile or other, and, after slaying her there have gone on to Kalee's, and put her to death also. The vagueness of what the Chowkeedar and Bhaugbut Hish, witness No. 15, say about other persons having been seen running beyond the prisoners, must strike the Nizamut Court, and perusal of the civil assistant surgeon's deposition will, I think, convince them, that the wounds, on both women, must have been inflicted by the same hand and weapon. They appear very terrible in the doctor's account, but a stonger man than the prisoner might have cut the women's heads in two, with the sharp, firm hilted, and *handy* sword, before the court. The head is more easily divided by cutting weapons than is generally supposed, particularly when struck laterally. Being convinced that the evidence, upon which I have been commenting, is fully sufficient to convict the prisoner, Romacanth Chatapadhia, of the wilful murder of Kalee Kuloonee, I can only say, in conclusion, that I think he ought to be sentenced capitally.

Had the evidence been merely circumstantial, I should by precedent, have recommended imprisonment for life, but I think I have shewn that due weight ought to be given to the repeated statements of the eye-witness, Bonomalee, notwithstanding the perjury committed by him in my presence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) This trial and the conclusion of the sessions judge on the evidence given in it, have been reported in the most careful manner. The murders committed, that of which the prisoner has been found guilty, and that not accounted for, which occurred close at hand, on the same night, are shewn from the examination of the wounds alone, to have been of a barbarous and determined description, and there can be no doubt as to the punishment which should await the guilty party. On the record of the evidence, however, as brought up before this court, it does not appear that the

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crime, according to such evidence, has been satisfactorily brought home to the prisoner. If entire confidence could be placed in the depositions of the principal witness, Chidam Chowkeedar, the source of all the conclusions at which the sessions judge has arrived, there could be no doubt as to the full sufficiency of his evidence for conviction of the prisoner. This witness is the Chowkeedar of the village or *mohula*, in which the murders were committed, apparently a small *mohula*, belonging to the larger village of Rajgaon in which there is a police pharee within hearing of the spot. He represents, that on the night in question he had himself slept, before going on his rounds, at the house in which the two deceased women resided. He left the mother sleeping in the interior of the house, and the daughter in the verandah in the early part of the night. At about 3 o'clock A. M., in the course of his rounds coming near the same house he heard the deceased, Kulonee, crying out that Roma was cutting her down, and in proceeding nearer, he saw the prisoner running off with a drawn sword in his hand, in the direction of a tank, as far as which, witness pursued him, and where, on calling out, he was joined by Khosal burkundaze of the pharee, Kartick Ghatwal, Kooroo Roy Ghatwal, Rammeye chowkeedar and others; they then proceeded to the house of the prisoner, where he was charged immediately with the murder by the burkundaze, arrested, and sent to the pharee. The discrepancies in the several depositions before the judge, magistrate and at the police would alone render it necessary to receive this chowkeedar's evidence with great caution and doubt, but this necessarily is increased from the circumstance that he and the burkundaze, Khosal, are the only two of all the parties, who met at the tank and proceeded to the arrest of the prisoner who have been produced as witnesses; and it is to be recollected that they were the parties responsible for the detection of the crime, as well as for the disturbance and confusion in the village, which their own depositions make it appear had been going on for some time before the chowkeedar, as he represents, saw the prisoner, and discovered the corpse of Kulonee, the first of the two found. The main objection to his evidence as bearing on the question of its veracity and whether the circumstances which he represents were actually those under which the murder of Kulonee took place, is, that before the police and the magistrate, he deposed to his having seen two persons besides the prisoner running away, when he was attracted by the shouts of the deceased, whilst this statement was altogether dropped in his depositions before the sessions; and it has been wholly left uninquired into, during the mofussil investigations after they had become solely directed to the charge against the prisoner. Before the police and magistrate, he deposed to having seen the prisoner first at the distance of a *russee* from where he was

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running, in the way to the tank, and at similar distance necessarily from the house of Russick Tantee, under the eave of which the body was found; before the sessions, he states that he saw him coming actually out of the enclosure of that house. These and other similar discrepancies would not perhaps have been of so much consequence, had the more independent parties, who are alleged to have joined the chowkeedar at the tank, just at the time of the arrest of the prisoner, been produced; but as they have not been so, and from the bias we see in the whole course of the depositions of the chowkeedar, including that part in which he even swears that some time previous to the catastrophe, the prisoner had actually avowed to him the intention of murdering one of the deceased, we cannot consider his evidence sufficiently trustworthy for a conviction. To proceed with the other objections to the evidence generally; the chowkeedar and police burkundaz represent, that having reached the house of the prisoner, they remained outside at the door and called him out; that he was then in a trembling and agitated state; that, at the moment, they charged him with the murder, and that he was then allowed to go back into his house and change his clothes, after which he was forwarded with one of the ghatwals to the police station. The evidence of this ghatwal is not taken; so we are again left, as to the question of the condition of the prisoner at his arrest, to the depositions of the chowkeedar and burkundaz. They make serious contradictions of each other in respect to the prisoner having been allowed to change his clothes; the burkundaz at one time allowing that he had permitted him to do so, at another denying it; the chowkeedar throughout stating that the change of clothes had taken place. These several statements and the representations as to the arrest of the prisoner, it would not, perhaps, have been necessary very prominently to notice, but that they do the reverse of bearing out what the chowkeedar has deposed to as to his actual detection of the prisoner in the act of the murder and his immediate pursuit of him. Had the statements been true, that he was joined directly by the burkundaz and the others on the side of the tank, and that there had been the immediate pursuit of the prisoner to his house, it is not likely that there would have been any delay in at once entering the house and seizing the prisoner, as he stood: the captors would not have been satisfied, under the circumstances which they themselves represent, in merely calling on him to come out, and then allowing him quietly to go back into his house and change his clothes in which he perpetrated the murder. The account which the two witnesses, the burkundaz and chowkeedar, give of what occurred at this time, certainly leads to a very warrantable conclusion that the line of deposition which Cheedam took as to his witnessing what he afterwards stated he had, had not been first

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determined on; and that the prisoner was in fact called out of his house and taken up, not as the consequence of what Cheedam Chowkeedar had seen, but from the strong suspicions which attached to him. His own statement that he was called out from his house, on other pretexts of being required at the police station, and allowed quietly to go and change his sleeping clothes is, under the circumstances, much more like truth than what the chowkeedar and burkundaz have deposed to. After the prisoner was despatched in charge of the ghatwal to the phanree, the witnesses, Khosal and Cheedam represent that they went with the jemadar of the phanree, to the house of Russick Tantee in the yard of which, under the eave of the roof of the dwelling, the body of Kulonee was lying. It appears, according to the evidence on the record, that there were then living in this very house, two women and their two children. It would be supposed that the most immediate act of the police would have been to secure the statements of the inmates of this house; instead of which, we find that they were not then looked for or questioned; but on the 11th, one of the children, a boy of eight or nine years old, is brought to the station, and he states that he was woke up by the noise of the murder, rose from where he was sleeping near his mother and went to the chink of the door, which he peeped through, saw the prisoner, Roma, cutting down Kulonee, and having so seen, he quietly ran back to the side of his mother, but said not a word of what he had seen. Surely this does not look like a true story on the part of the boy: and from there having been no enquiry the previous day from the inmates of the house, the evidence has every appearance of an afterthought on the part of those who were employed in bringing home the crime to the prisoner. It is not likely that a child of this age, would have remained silent on seeing such an act, and said not a word at the time to his mother. At the sessions, he denies the whole of the statements he had made, alleging that he had not seen what he stated, and that he had been instructed to say what he had by Kalee Roy, the talookdar of the village, who lives close at hand to the scene of the murder. The sessions judge receives the evidence of this boy before the magistrate in preference to what he had stated to himself and grounds the conviction very much on what he had deposed to. From this view, we differ, and we do not consider it at all probable for the reasons just given, that the boy had ever seen Roma, the prisoner in the act of the murder. On the evidence of other witnesses, we cannot place any safe reliance, it was not for the most part taken before the police until several days after the deposition of Cheedam Chowkeedar; that witness had deposed, that when he was calling out and pursuing the prisoner, all the villagers had remained shut up in their dwellings; and did not come forward to his call; yet these witnesses severally depose to

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having heard the words and cries of Kulonee, when being cut down, and of the chowkeedar saying that Roma was flying off after having killed her. Were these statements true, and that they heard the chowkeedar say that the culprit was flying, it is not to be supposed that they would not; some of them have come to his aid. One of them, No. 12, goes further than the rest, and swears that he heard Roma after Kulonee's cries subsided, say that he "must then go and look after Gopinee," the other woman found murdered. Considering the time this evidence was taken after the chowkeedar's representations were recorded, considering also the part Kalee Roy, the talookdar of the village, was taking to bring home the crime of the prisoner, we cannot accept the evidence as true. As to the sword found in the house of the prisoner sharpened, the day after the arrest, we do not attach much weight to the circumstance; most natives in that part of the country have swords in their houses. That serious suspicions, as concluded by the judge, considering his position with respect to the deceased, Gopinee, and his being at variance with her and her mother attach to the prisoner, we cannot doubt; but under all the circumstances of the case, we hold that his arrest and the statements of Chidam Chowkeedar, resulted from these suspicions, rather than that they followed what he deposes to having seen. As we cannot trust in his evidence on the grounds above given, looking at all the particulars of the case, we do not think the murder of Kulonee proved against the prisoner, and therefore order his release.

SUMMARY CASES.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

KISHTO CHANDAL AND OTHERS.

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Case of KISHTO CHANDAL and others.

A magistrate who may consider that security for good behaviour, for a period in excess of what he is himself competent to require it for, should not imprison for the period within his own competence and send the case to the sessions for the remainder, but should apply for sanction for the whole period which he thinks necessary.

CHARGE.—Bad character.

With reference to a petition presented by the above prisoners, the following letter was addressed by the Nizamut Adawlut to the sessions judge of Moorshedabad No. 92, dated 8th February, 1856.

The Court, having had before them a petition from Krishto and three others, prisoners in the jail of Moorshedabad, direct me to forward it to you and to request that you will return it to the petitioners and instruct them, if they desire to bring their case before the Court, as to the manner in which they should submit their petition.

In reply to the above, the following letter was submitted by the sessions judge of Moorshedabad to the Nizamut Adawlut, No. 74, dated 15th April, 1856.

With reference to the instructions of the Court of Sudder Nizamut Adawlut, contained in your letter No. 92, dated 8th February last, I have the honor to state that the petition of Krishto and others, which was forwarded with your letter, was sent to the magistrate with directions to return it to the petitioners and make known to them that, if they wished to bring their case before the Nizamut Adawlut, they should forward their petition to this court for submission to them.

The prisoner Krishto Chandal has presented a petition of appeal to the court of Nizamut Adawlut against the order of my predecessor, passed on the 31st December, 1855, which I now beg to submit, together with the original proceedings of the case.

It appears that on the 11th of December last, the petitioner and twenty-one others were convicted of being bad characters and sentenced by the magistrate to imprisonment for one year, in default of their furnishing each two securities of 50 Rupees each for good conduct. The magistrate further ordered, that the proceedings of the case should be submitted to the sessions judge, in order that the sanction of that officer might be obtained to the detention of three of the defendants for a further period of two years in default of their furnishing security.

The petitioner and nine others having appealed against the magistrate's order, the sessions judge, on the 31st December, 1855, dismissed their appeal, confirming the magistrate's decision, and at the same time sanctioned the detention of the prisoner and one other for a further period of two years in default of security.

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Case of KISHTO CHANDAL and others.

Against this order of the sessions judge, the petitioner has now appealed. It appears to me to be doubtful, with reference to the provisions of Section 2, Act XXXI. of 1841, whether the petitioner has any right to appeal, but as the previous petition preferred by him and others was returned by the Court, apparently, only because it had been informally preferred, I submit the original proceedings of the case together with his present petition for the consideration and orders of the superior Court.

Resolution by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) No. 635, dated 18th July, 1856.

The Court observe that it has been before ruled* that Act XXXI. of 1841, does not interfere with an appeal from the orders of sessions judges requiring security for good conduct under Section 9, Clause 2, of Regulation VIII. of 1818. Referring, however, to the law in question, it appears that when the magistrate considers imprisonment on default of security to be necessary for a longer period than one year, he should not sentence to the portion of the time which he is himself competent to do and seek the orders of the sessions judge for an addition, but should send up the case at once to the sessions, with his opinion why he thought it required the orders of the sessions court to imprisonment for the full term which that court only can award. Under this view of the case, the Court cancel the orders now passed by the sessions judge, which impose two years in addition to the year awarded by the magistrate.

* From the sessions judge of Tipperah to the register of the Nizamut Adawlut, No. 321, dated 24th October, 1849.

I should wish to be informed by the court of Nizamut Adawlut, whether an order passed by a sessions judge, in appeal from the order of a magistrate passed under Clause 1, Section 9, Regulation VIII. of 1818, be appealable to the Nizamut Adawlut.

From the register of the Nizamut Adawlut to the sessions judge of Tipperah No. 1252, dated 2nd November, 1849.

The Court, having had before them your letter No. 321, of the 24th ultimo, direct me to inform you that an appeal lies to the Nizamut Adawlut from an order passed by a sessions judge, in appeal from the order of a magistrate under Clause 1, Section 9, Regulation VIII. of 1818.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

BABOO SHEIKH, DINOO GHOSE, KHETTRO KHAMAROO, LUSKUREE SHEIKH, AND BROJO BHOEMALEE.

Moorshedabad.

1856.

July 18.

Case of BABOO SHEIKH and others.

Ruling as in preceding case.

CHARGE.—Bad characters.

The following is an appeal against the decision of the sessions judge of Moorshedabad passed on the 26th March, 1856.

It appears that on the 29th February last, the petitioners and another were convicted of being bad characters, and sentenced by the magistrate to imprisonment for one year, in default of their furnishing each two securities of 50 Rs. each for good conduct. The magistrate further ordered that the proceedings of the case should be submitted to the sessions judge, in order that the sanction of that officer might be obtained to the detention of the prisoners for a further period of two years in default of their furnishing security required.

The prisoners appealed against the magistrate's orders, and the sessions judge on the 26th March, 1856, dismissed their appeal, confirming the magistrate's decision, and at the same time sanctioned the detention of the appealing prisoners for a further period of two years in default of security.

Resolution of the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) No. 636, dated 18th July, 1856.

The Court observe that the course pursued by the magistrate was informal. When he considered that detention for one year, in default of security, was insufficient, he should not have passed an order of imprisonment for that time and then submitted his proceedings for sanction to imprisonment for two years more, but he should, without passing sentence for a year's imprisonment, have submitted them with his recommendation of imprisonment for three years by one order. As the sessions judge has confirmed the magistrate's order for one year, the Court cannot interfere with it, but as he was not authorised to sentence the prisoners to two years' additional imprisonment, the Court cancel so much of his order as awards it.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND MUKOOND LAL

versus

SEETARAM (No. 3.) AND GHASIRAM (No. 4.)

Shahabad.

1856.

August 2.

Case of SEETARAM and another.

Case referred owing to difference of opinion between the sessions judge and law officer: the latter being for conviction of prisoners on a charge of forgery the former for acquittal. Orders of the judge upheld, there being no allegation of forgery of the signatures attached to the deed.

CRIME CHARGED.—Forgery and conspiracy.

Committing Officer.—Mr. J. T. Woosley, deputy magistrate of Saseeram, zillah Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 29th May, 1856.

Remarks by the officiating sessions judge.—The circumstances of this case are as follows.

On the 15th June 1855, Mukoond Lal instituted a suit in the sudder ameen's court at Arrah for recovery of 425 Rs. principal and interest, due on a bond given by Ghasiram (prisoner No. 4,) dated the 28th Ughan 1259, who, as security for the repayment of the amount had pledged the house in which he lived in mouza Bhubhooa. Subsequent to the institution of this action, Mukoond Lal heard that Seetaram (prisoner No. 3,) had brought a suit in the court of the Moonsiff of Saseeram against Ghasiram for the amount of a bond bearing date 1st Bhadoon 1258, in which the same house abovementioned had been also pledged as security. Mukoond Lal then got a copy of this bond and found that the stamp paper on which it was written had been bought by Imrit Chamar, he then discovered that Chowdry Bhyrodial Singh had instituted a suit in the same Moonsiff's court against this Imrit Chamar for recovery of an amount due on a bond dated 2nd Bhadoon, 1258; on getting a copy of which he found that the stamp on which it was written had been sold on the same day, by the same vendor, to Imrit Chamar as the stamp paper in the case of Seetaram *versus* Ghasiram; and also that the number of both stamps was the same, viz. 720, he accordingly brought this circumstance to the notice of the Moonsiff, who enquired into the matter regarding these stamps, both of which bearing the same number were recorded as having been sold on the 11th August 1851, by Haimun Lal, stamp vendor to Imrit Chamar. On referring to the collector, that officer reported that in the accounts of this stamp vendor for the month of August 1851, only one stamp of one rupee value bearing the number 720, had been sold to Imrit Chamar of Nussaud, pergunnah Champore, and that on the 11th of that month, no other stamp of that value appears to have been sold. Haimun Lal, the vendor, first stated before the

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Case of SEETARAM and another.

collector that he had sold only one of the stamps, but afterwards acknowledged having sold both. The Moonsiff accordingly made over the case to the deputy magistrate of Saseeram by whom the prisoners have been committed to this court.

The case is supported by the evidence of four persons who were eye-witnesses to the consultation between the prisoner, the purchase of the one rupee stamp for eight rupees from Haimun Lal, the stamp vendor, and the writing of the fabricated bond for the purpose of saving Ghasiram's house from being sold on account of the action brought against him by Mukoond Lal. I cannot, however, consider these depositions worthy of credit; it is most improbable that the prisoners should have committed such an act in so open and glaring a manner as they are said to have done in the presence of so many persons; three of these witnesses are merely servants, and far from being respectable in appearance; in the Oozurdaree petition given by Mukoond Lal in the Moonsiff's court making mention of this deed having been fabricated, none of these are named; there is also an important discrepancy in their evidence as to the time when this alleged occurrence took place. One witness Ramzan stated before the Moonsiff that it was on the *first* week of Joist; whilst in this court he mentions it having happened in the *last* week of that month; the next witness Hossain Ali Khan, deposes *before me* that the *first* week was the time, and another witness Huruk Chund whose name appears in the column of circumstantial evidence before the Moonsiff said, that it was in the *last* week, and in this court swears that it was in the first week. Under these circumstances, I cannot consider such evidence as trustworthy; then with regard to the stamps on which the two deeds are written bearing the same endorsement, although it is clear from this and from the stamp vendor's accounts that a fraud has been practised by the stamp vendor, there is nothing in the collector's proceeding or in the accounts to shew which of the two stamps is the one that was sold on the 11th August, 1851. The evidence of Haimun Lal the vendor is worthless, and he has committed perjury in giving answers diametrically contrary to each other in my court and that of the deputy magistrate, for which I have directed him to be prosecuted; there still remains the evidence of Imrit Chamar, whose name appears as the purchaser on the back of both of the stamps; he denies having bought the one on which the deed forming the subject of this case has been written, but is unable to recognize the one which he did buy.

On referring to the* two cases in the Moonsiff's court, viz. that of Bhyrodial *versus* Imrit Chamar and Sitaram *versus* Ghasiram, I find them equally open to suspicion, the former was instituted on the 23rd August, 1855, for recovery of 26 Rs. due on the bond dated 1st

* Vide para. 2.

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Bhadoon, 1258, and was decreed on the 8th of the following month, the claim having been acknowledged by Imrit Chamar. The latter was instituted on the 26th July, 1855, for recovery of the amount of the bond dated 2nd Bhadoon 1258, and on the 16th August, an acknowledgment of it was made by Ghasiram. The prisoners deny the charge pleading the validity of the bond and that between them and Mukoond Lal there is enmity, several cases having been brought against them by his father and himself; their witnesses give hearsay evidence in their favor and two other witnesses, Shewburat Tewary and Ram Doss, who have been entered by the deputy magistrate in the column of circumstantial evidence, support the defence, inasmuch as they acknowledge having attested the bond in Bhadoon, 1258, but the discrepancies in their depositions are so great as to render the truth of their evidence very doubtful.

Two copies of proceedings in the deputy magistrate's court and in that of the Moonsiff have been filed on the part of the defendants, which are sufficient to shew the bad feeling that exists between them and the prosecutor Mukoond Lal, one of them is, that of a charge of burglary brought by Shew Gholam Sahoo, father of the prosecutor against Seetaram and others, on which the latter were acquitted, and the other is a suit by Ramkissen Tewary, a servant of Shew Gholam Sahoo *versus* Ghasiram on account of a bond which was dismissed on the 4th of last January by the Moonsiff, who records in his decision that enmity existed between Ghasiram and Shew Gholam Sahoo.

Under these circumstances, although there is doubtless strong suspicion as to a fraud having been perpetrated by the prisoners. I do not consider the evidence sufficiently satisfactory for conviction and I would accordingly acquit them of the charges,

The case has been delayed in consequence of the non-attendance of some of the witnesses, and on account of references being made to the collector and the moonsiff of Saseeram in the course of the trial.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) There can be no conviction of forgery in this case. The deed marked B. cannot be regarded as forged, for it is not pretended that the signatures of Ghasiram, and the witnesses to it, are other than genuine, whatever may have been the object of preparing it.

As the second count has not been proved to the satisfaction of the officiating sessions judge and law officer, we cannot enter upon it.

We acquit the prisoners and direct their release.

The officiating sessions judge is referred to Section 7, Regulation XIV. 1810, by which he might have admitted the prisoners to bail, pending this reference.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND MUSST. ADARI

versus

FADIL GAZEE.

Jessore.

1856.

August 2.

Case of FADIL GAZEE.

Prisoner convicted of rape on the evidence of witnesses to the violation of prosecutrix; and there being no proof in support of the defence that she was a consenting party.

CRIME CHARGED.—Rape on the person of the prosecutrix, Adari Beebee.

Committing Officer.—Mr. E. W. Molony, officiating magistrate.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 30th May, 1856.

Remarks by the officiating sessions judge.—The trial was conducted under the provisions of Section 4, Regulation VI. 1832, the jury being formed of the following respectable natives, viz. Moonshee Gyasodeen, Hurreenarain Ghose, and Ishur Chunder Mookerjia.

The facts of the case on the record are, that on the 4th April last, about 10 o'clock A. M. the complainant, wife of Khoosal, a pretty girl of sixteen years of age, was standing at the doorway of her house when accosted by the accused who apparently, under pretence of asking for a *soot nullee*, wished to worm out if she was alone in her house. From her reply finding such was the case, he put his arms around her, forcibly drew her into the house flung her down and gagging her mouth with his right hand, effected a criminal connection with her. The girl before her mouth was well gagged managed to yell out for assistance; her screams excited the attention of witness, No. 1, a neighbour and witness, No. 2, the complainant's mother, who was collecting cowdung, a short distance off. These witnesses came promptly to the door of the house and there found the accused lying over the complainant evidently in the enjoyment of his cruel purpose. The accused then got up, hastily offered to give the complainant a rupee if she would say nothing more of the matter and then ran off The witnesses, Nos. 3 and 4, who are also neighbours, heard likewise the shrieks and stood on the road near their houses to see or hear what was the cause of them. While so standing, they saw the prisoner run out of the complainant's house and make off, and ultimately going to the house they found complainant in much distress at the dishonour she had undergone. They both, as also witness, No. 5, distinctly state that the complainant is a wife of unblemished character, and that they are confident she never received any attentions from the prisoner or in any way at any time ever encouraged him to approach her.

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Case of FADIL GAZEE

The complainant proceeded to the thannah the following morning and gave her deposition, mentioning the names of her witnesses. Owing to the police officers being engaged at the time in the investigation of other serious offences that had occured, they were unable, until after several days, to carry out the investigation of the complaint forming the subject of the present trial. The facts of the case they, however, on investigation, found to be true and forwarding the parties to the magistrate, the depositions there taken accord on all points with those taken in this court.

The prisoner pleads *not guilty*, has denied all along the charge and asserts that it is instituted out of malice, owing to his having had quarrels with Khooshal the complainant's husband and one Imamdeen (since dead) father of witness, No. 1.

The witnesses cited by the prisoner, thirteen in number, with the exception of witness No. 7, know nothing of the altercations, have all heard of the rape and assert it is the prevalent belief it was really committed. The prisoner is a married man but apparently not on very loving terms with his wife.

The jury find a verdict of guilty against the prisoner of the charge he is committed on. In this verdict I coincide, as I see not a shadow of reason for believing the charge to be false, and circumstances attending the offence and its prompt discovery all tend to show, unmistakably, that the complainant was forcibly raped ; that from the prisoner being a tall, strong, powerful man, it was out of her power successfully to resist him ; that she immediately screamed for aid which brought to the spot the witnesses, Nos. 1 and 2, and that as soon as possible she instituted her complaint against the prisoner. Under these circumstances, I recommend that the prisoner Fadil Gazee be sentenced to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The witnesses all depose very directly in support of the statements of the violated woman. The prisoner denies that he was with her at the time the rape is deposed to, as having taken place, but of this there is no doubt, and the only question which remains is, whether the prosecutrix was a consenting party or not. Considering the defence entered by the prisoner, and seeing no reason to doubt the evidence of the witnesses for the prosecution, we concur in the finding of the judge and of the jury who assisted him, and sentence the prisoner as recommended.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND MAHATABOODDEEN

versus

SHEIKH BOLLAKEE.

Dacca.

1856.

August 2.

Case of SHEIKH BOLLAKEE.

Prisoner sentenced to death for the wilful murder of his wife.

Attention directed to certain paragraphs of C. O. No. 54 dated 16th July, 1830.

CRIME CHARGED.—1st count, wilful murder of his wife Musst. Roopee; 2d count, culpable homicide of his mother, Lukhee Bewah.

Committing Officer.—Mr. S. F. Davis, officiating joint-magistrate of Furreedpore.

Tried before Mr. R. T. Scott, officiating sessions judge of Dacca, on the 19th May, 1856.

Remarks by the officiating sessions judge.—On the night of the murder the prisoner Bollakee, his wife Musst. Roopee and his mother Musst. Lukhee slept in the same hut. The witness Nymuddeen (No. 2) nephew of the prisoner, and his mother Musst. Phellanee (witness No. 1) slept in another hut of the same homestead. The witness Busseeruddeen (No. 3) also slept there at Nymuddeen's request, as he dreaded the violence of the prisoner.

During the night, the prisoner rose from his bed and murdered his wife with repeated blows of a sen; he dragged the body still quivering in front of Nymuddeen's hut. His mother, who endeavoured to stay his hand, received a wound on the wrist, which proved fatal. Her screams roused Nymuddeen, Busseeruddeen and Phellanee (witnesses Nos. 1 to 3) but they were unable to prevent the murder. The chowkeedar and other neighbours* arrived; they found the mangled body of Musst. Roopee and Musst. Lukhee wounded. The prisoner was seated at the door of his hut having placed his sen under the door of Nymuddeen's hut. He confessed freely to the murder, assigning in justification that his wife intrigued with Joreef (witness No. 22). This murder was not committed by the prisoner on a sudden impulse of revenge, consequent on the discovery of his wife's infidelity. He had been long aware of the intrigue between his wife and Joreef, and had occasionally beaten her on account of it. The best account of the circumstances that led to the murder, is to be found in the deposition of Musst. Lukhee and in his own confessions. He had a quarrel with Musst. Phellanee (witness No. 1) in the daytime and had been taunted by her with this intrigue; this induced

* No. 12, Nazir Mahomed.
,, 13, Sheikh Pylan.
,, 16, Sheikh Zumeer.
,, 17, Futteek chowkeedar.

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August 2.

Case of SHEIKH BOLLAKEE.

a quarrel later in the day between him and Joreef and Nymuddeen, in which he got beaten and had two teeth broken. He then went to complain at the joint-magistrate's house and on his return, he was still further irritated by finding Joreef talking to his wife; however he allowed him to go away unnoticed, eat his dinner and went to bed as usual. He appears to have been greatly enraged with Nymuddeen and Joreef, and being unable or afraid to revenge himself on them, he vented his rage by the murder with which he stands charged.

From his putting the weapon by Nymuddeen's door-way, and placing the body opposite his hut, it appeared to have been his intention to have accused him of the murder, but the chance-wound given to his mother and perhaps some feeling of remorse defeated this plan and caused him to confess.

In this court, he denies his guilt and declares that Nymuddeen, Joreef and Busseeruddeen had murdered his wife and wounded his mother, whilst he was away from home, just after dark; that on his return he remained with the body and his wounded mother afraid to call for assistance, and that on the following day the naib nazir beat him to make him confess at the police enquiry, and persuaded him that if he confessed before the joint-magistrate he would be released. He called two witnesses who do not prove any thing in his favour.

The *futwa* of the law officer finds the prisoner guilty of *kutl-amd* and declares him liable to *kissas*.

I concur in the finding, and seeing no extenuating feature in the case, recommend that he be sentenced to suffer a capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We concur in the view taken by the officiating sessions judge of this case. There is no doubt that the prisoner murdered his wife in a barbarous and cruel manner.

The quarrel which took place in the day time affords no palliation of the prisoner's crime; for there was time for his anger to cool, and he did not act under sudden heat and passion. We convict the prisoner of the wilful murder of his wife and sentence him to death.

The officiating magistrate should have committed the prisoner for the murder and not for the culpable homicide, of Musst. Lukhee, according to paragraph 16, of Circular Order No. 54, dated July 16th, 1830, and the deposition of Musst. Lukhee before the officiating joint-magistrate dated 9th February, 1856, should have been transferred to the record of trial and proved, according to paragraph 6, of the same Circular Order.

PRESENT:
B. J. COLVIN, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT
versus
PERSHAD PURRAMANICK.

Midnapore.

1856.

August 2.

Case of PERSHAD PURRAMANICK.

Prisoner charged with belonging to a gang of dacoits acquitted, as there was not sufficient corroborative evidence to support that of a single witness, an approver.

CRIME CHARGED.—1st count, having committed a dacoity on the night of 27th July, 1837, in the house of Comul Paroe of thannah Pudumbassun; 2nd count, having committed a dacoity on the 23rd July, 1849, in the house of Bhorut Bakoorah, uncle of Banideb Bakoorah plaintiff, of thannah Sukung; 3rd count, having committed a dacoity on the 22nd January, 1850, in the house of Ukhoyram Sahoo, of thannah Daumaree; 4th count, having committed a dacoity on the night of 16th September, 1852, in the house of Narain Moyrah, plaintiff, of thannah Cutwally, Midnapore; 5th count, with being by profession a dacoit and being himself a leader and having belonged t the gang of Nos. 1 and 2, approvers, and Mohun Mythee Sirdar dacoit, (convict).

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 14th of May, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty.*" The approver witnesses swear to the identity of the prisoner, and there is no reason to doubt this; and further denounce him as having accompanied gangs of dacoits and committed the dacoities charged against him.

The records of the cases of dacoity noted in the margin* are produced in corroboration of the evidence of the approver witnesses.

In the 1st case, No. 105. One Nunaee Kandar was seized on suspicion, being a known bad character, and in his confession taken at the thannah on the 4th August, 1837, named the approver witness No. 1, Bindabun Mythee, and one Pershad Singh and others; all were released by the magistrate. The approver witness No. 1, in his confession taken on the 18th December, 1855, before Captain C. H. Keighly, declared that the above confessing prisoner had made a mistake in designating Pershad as "Singh" instead of

* Nuthee, No. 105, dacoity in the house of Comul Paroe.
Nuthee, No. 67, dacoity in the house of Banideb Bakoorah plaintiff.
Nuthee, No. 10, dacoity in the house of Ukhoyram Sahoo, plaintiff.
Nuthee, No. 637, dacoity in the house of Narain Moyrah plaintiff.

1856.

August 2.

Case of PERSHAD PURRA-MANICK.

"Purramanick," and before this court swears the prisoner is the man who was concerned in the dacoity.

In the 2nd case, No. 67. The fact of the dacoity in Bhorut Bakoorah's house is established by the record. Two prisoners, Muddoo and Bechoo Mythee, were sentenced by the sessions judge.

In the 3rd case, No. 10. The record confirms the evidence of the witnesses that a dacoity was committed. It shows that Harroo Sahoo and Tarroo Sankee, were arrested on the information of one Muddoo Booeeah. They both confessed on the 28th January, 1850, before the darogah, and named Pershad Purramanick, the prisoner, who was arrested by the police but afterwards released. Harroo and Tarroo repeated their confessions before the magistrate, and named the prisoner as an accomplice. The confessing prisoners, Harroo and Sahoo and Tarroo Sankee were sentenced by the sessions court.

In the 4th case, No. 637. This dacoity is proved by the record and other instances of his arrest in various offences and of his being sentenced are set forth in the report of the record-keeper of the magistrate, which have been submitted. Under these circumstances there is no doubt, in my mind, of the prisoner's having belonged to a gang of dacoits, of which I convict him and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The evidence which is adduced in this case does not bring home the charge to the prisoner. There is only one witness, an approver, who swears to a particular dacoity in which he was concerned along with him, viz. that in the house of Ukoyram Sahoo. This witness is not named in the confessions of Harroo Sahoo and Tarroo Sankee, taken in January, 1850, when the dacoity occurred, and in his deposition he gives none of the particular circumstances of that dacoity from which we can infer his actual presence at it. If the approver's name had been mentioned at the time as concerned in the dacoity, and he was now able to describe the particulars of it, we could, with safety, take his evidence into account against the prisoner, but as this is not the case, we cannot look at it as sufficient. It is further to be noticed, as regards the other cases, that there is no attempt to corroborate the evidence of the several approvers as regards them. The prisoner must be released. The Court observe that it is insufficient to send up records as proof of the occurrence of dacoities, without oral testimony corroborative of the circumstances these records detail.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GUNGARAM TELEE

versus

GOKOOL.

Behar.

1856.

August 4.

Case of GOKOOL.

The conviction was altered to assembling and going forth for the purpose of dacoity.

CRIME CHARGED.—1st count, planning a dacoity in the house of Gourbux Shah, brother of the prosecutor; 2nd count, belonging to a gang within the meaning of Act XXIV. of 1843.

CRIME ESTABLISHED.—The same as in the 1st count.

Committing Officer.—Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. F. Kemp, sessions judge of Behar, on the 26th February, 1856.

Remarks by the sessions judge.—The particulars of this case will be found in my report to Sudder Nizamut Adawlut, No. 215 of 11th October, 1855, to which the Court replied in their resolution,* No. 31, dated the 7th January, 1856.

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* *Resolution by the Nizamut Adawlut.*—(Present: Messrs. B. J. Colvin and J. H. Patton), No. 31, dated 7th January, 1856.

The Court, having perused the proceedings connected with the trials of Gokool, observe that the prisoner was committed on the 29th May, 1855, in two distinct cases, viz in Calendar No. 2 on a charge of effecting his escape whilst he was a prisoner in sessions *hajit*, awaiting the decision of the Sudder Nizamut, in a referred case; and in Calendar No. 3, on a charge firstly of planning a dacoity in the house of Goorbux Shah, and secondly of belonging to a gang of dacoits, within the meaning of Act XXIV. of 1843.

As regards the first case, his commitment, the Court remark, was unnecessary; for by section 5, Regulation XII. of 1818, the offence charged was punishable by the magistrate, as the escape was unaccompanied by any act of serious personal violence, nor was commitment required in consequence of Jaimungal Singh's committal in the same case on the charge of having given the said Gokool refuge in his own house, as the act of escape by Gokool and the act of protection by Jaimungal were totally distinct, and therefore Constructions No. 379 and 622 do not apply. The sessions judge should have quashed the commitment of Gokool in Calendar No. 2, and directed the magistrate to dispose of the case himself. This course he will now follow.

With reference to the 2nd case, the Court observe that the sessions judge recommends a sentence of transportation for life on conviction on the 2nd count, which, in his opinion, renders the passing a sentence on conviction on the 1st count unnecessary; but he has only referred in support of the prosecution on the 2nd count, in cases in which the prisoner had on trial either been convicted or acquitted, and he does this on the ground that Act XXIV. of 1843, refers to offences as well before as after the passing of that law. The Act, however, does not contemplate offences for which a prisoner had previously been brought to trial. There is therefore no proof before the Court that could sustain a conviction on the 2nd count. There remains only for disposal the charge involved in the 1st count, which is within the sessions judge's competence to pass orders upon. The case is therefore sent back for that purpose. The sentences which may be passed upon the prisoner, should

1856.

August 4.

Case of Gokool.

The first was originally reported as follows:

"Towards evening of the 1st September last Soobrun Gwala (No. 6.) reported having seen a body of men collected in an orchard some distance outside the village of Hussunpoora where Goor Suhye (p. 4.) and the prosecutor reside. Soobrun, according to his original statement before the police, for before this court he grossly equivocated, recognized the prisoner Goorsuhye and his brother Gokool amongst this party. The latter also is a notorious dacoit then and still a fugitive convict, vide printed decisions page 230 under date the 27th February, 1854.

Witness No. 1, Govind Gwala.
,, ,, 2, Rahee Do.
,, ,, 6, Soobrun Do.

"On the within three chowkeedars and the Gorahit of the place proceeding to the spot the suspected dacoits made off, when they met Goorsuhye, who advised them not to pursue them. Disregarding him some distance off they came up with Hurnam Singh (prisoner No. 3,) as he was crossing a reservoir, and after some show of resistance succeeded in capturing him with a bundle which contained seven spear heads and four *mussals*. They were threatened by Hurnam's companions and afraid to pursue them, one of whom, however, dropped a gun. A bundle of bamboo shafts was also found in the orchard.

Wit. No. 1, Govind Gwala Chowkeedar.
,, ,, 2, Rohee Gwala Chowkeedar.
,, ,, 3, Rughoo Dosadh Do.
,, ,, 4, Bengalee Do. Gorahit.

"Girdharee Gwala (witness No. 5,) in corroboration of Soobrun's (witness No. 6,) original information told the police that he had seen Goorsuhye in communication with the dacoits, some eight or ten persons, in the orchard prior to the pursuit, but like as Soobrun equivocated so did this witness turn his evidence before this court into merely having seen Goorsuhye there sitting by a sick stranger and his two companions, i. e. adopting the story set up by Goorsuhye both before the police and magistrate.

"After Hurnam's seizure, Goorsuhye also was apprehended in the village.

"The attack was supposed to have been planned against the prosecutor's house from Goorsuhye and Gokool having been concerned in one against it many years ago, and from Goorsuhye's having been seen to pass by it contrary to his habits, and that he did pass by the plaintiff's house whilst going to the orchard; Goorsuhye himself volunteered to go before the magistrate.

"Hurnam Singh, (prisoner No. 3,) a stranger to the witnesses,

have effect consecutively from the date of the expiry of the sentence of the Sudder Court dated 27th February, 1854, in the case in which the prisoner was convicted of aggravated culpable homicide.

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his captors, confessed both before the police and magistrate to all thus deposed to as having happened, and that a dacoity was being planned by Gokool at which Goorsuhye was present. He revoked these confessions before this court, pretending he had been put up to them by his captors and the police, the former of whom had seized him as a passerby.

"Goorsuhye's (prisoner No. 4,) pretences before the police and magistrate, and both of which he acknowledged before this court, were, that happening to visit the orchard in search of some medicine, he saw there two or three strangers, one of whom apparently sick was covered up, and asking to see his face was told to mind his own business. He was returning home when he met the witnesses with the other prisoner whom they had captured with some spears, &c. Before this court he adopted a new defence, detailing how the police had got up the case against him in collusion with the prosecutor and the Mullick Moonshee Ameer who had deprived him of his Chowdreeship. He was once imprisoned in 1834 for privity to dacoity. He urged that he had ceased to have any connection with Gokool since he had turned Mussulman. He cited numerous witnesses who knew nothing in his favor, but rather established his disreputable character, at the same time that his cross-examination of them utterly failed to elicit any thing that could consistently account for the prosecution having been solely got up to criminate him.

"This pursuit of dacoits by the chowkeedars of the village looks at first sight very unusual, yet all the main facts of the occurrence as deposed to, stand recognised by the prisoner Hurnam's repeated confessions and the tenor of Goorsuhye's original defences. Hurnam's own conduct warrants the conclusion that his confessions were voluntary, because it is difficult to understand how a stranger, as he was, to his captors, could have been so effectually influenced, any explanation of which too, is not attempted, as thus voluntarily to incur the risks of a false confession wilfully persevered in before the magistrate, when its details alone tended to criminate himself directly and the prisoner Goorsuhye only at its close and then but very indirectly. Neither is there any probability in Goorsuhye's account before the sessions of Hurnam's extorted confessions. He is not a likely person to have continued silent from the first, regarding such details thus started for the first time in sessions; had there been a word of truth in them, and the only suicidal explanation he has to offer for having neglected to do so before the magistrate is 'hurry.' He is just as competent, designing and dangerous a character as his brother Gokool, and the particulars deposed to against him in the present trial are quite in keeping with the notorious characters of both brothers. His own examination of his witnesses elicited that he had made

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himself useful at the police chowkee as a writer and his bearing and address was quite that of a scheming mokhtar who would never even lose a trifle in a hurry. The equivocations of the two witnesses Soobrun and Girdharee may be looked on as occasioned by his tampering. I find nothing indicative of a false prosecution or extorted confessions, but, on the contrary, much indirectly happening, as confirmed to a certain extent by the prisoners themselves, corroborative of their prosecution.

"I accordingly convict Hurnam, (prisoner No. 3,) on his own confessions and Goorsuhye (prisoner No. 4,) under all the circumstances of the case on strong presumption of the counts charged and have sentenced them as within."

The same evidence under the court's resolution No. 652,* of 31st July, 1855, now repeated before a jury, convicts Gokool as it previously did his fellow-companions in the crime during Gokool's evasion of justice.

Wit. No. 1, Govind Gwala Chowkeedar.
„ „ 2, Rohee Gwala Chowkeedar.
„ „ 3, Rughoo Gwala Chowkeedar.
„ „ 4, Bungalee Gwala Chowkeedar, Gorahit.

The prisoner pleads *not guilty*, and sets up an *alibi* to the effect, that he was absent at the time when accused of planning the dacoity, either in Calcutta, passing himself off as Gokool's brother, endeavouring to obtain a review of judgment before the Sudder Nizamut, any such false prosecution by such a well known character through a Behar agent being improbable in itself, or that falling sick whilst returning to Behar he had been detained at Moorshedabad. He cited three witnesses, residents of Moorshedabad in support of the latter statement. One of whom Bakhoree Sonar (witness, No. 5,) deposed accordingly, but was flatly contradicted by the remaining two, Bhuttun Khan (witness No. 6,) and Ameer Khan, (witness No. 7,) who even deny all acquaintance with him and which, with regard to Bhuttun Khan's, Bakhoree himself acknowledged to be the case, thus leaving Bakhoree's story altogether a disconnected one and in itself a palpable concoction.

The jury* unanimously return a verdict of *guilty* on the 1st count.

* Duleer Sing of Ullipoor, Roopae Patun, Lall Beharee Sing of Tajpoor, Behar, Dial Narain of Ahmudgunge Behar.

With the judgments already before me, still further corroborated by

* *Resolution of the Nizamut Adawlut.*—(Present: Sir R. Barlow, Bart.) No. 652, dated the 31st July, 1855. The Court, adverting to the offence with which the prisoner Gokool is charged observe that it is not one of those included in Act XXIV. of 1843, and that a trial on such a charge cannot be held except with a law officer, or under Regulation VI. 1832. The Court therefore, quash the trial and direct that the sessions judge will proceed with the case in the manner indicated in Section 4, Regulation LIII. of 1803.

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what has transpired up to the trials now under reference, I necessarily concur in the present verdict. The original prosecution of planning the dacoity seemed to me on that occasion, materially corroborated by Gokool's brother Goor Suhye's statements, and which Gokool's weak defence on the present occasion, only tends the more to confirm. He has been accordingly sentenced as within, the sentence to take effect from 27th February, 1868.

I am informed by the magistrate that it is proposed to remove the prisoner to Allipore jail which, either with reference to the long sentence now accumulated against him or his past history and character, is highly desirable.

Sentence passed by the lower court.—To be imprisoned with labor and irons in banishment for seven (7) years after expiration of his former sentence contained in warrant dated 7th March, 1854, viz. from and after the 27th February, 1868, passed on the 26th February, 1856.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with the sentence, but we consider that the charge should rather have been of assembling and going forth for the purpose of committing a dacoity, as the facts disclosed by the evidence support that view of the case, and the intent to commit a dacoity was plainly inferrible. We alter the conviction accordingly.

Chota-Nagpore.

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Case of BHEKARAM appellant and others.

The prisoners appeal was rejected, the evidence for the prosecution supporting the charge.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND TUNNOO

versus

BOHURUN (NO. 5,) MOOTOOR (NO. 6,) AND BHIKARAM (NO. 7, APPELLANT.)

CRIME CHARGED.—Wounding with intent to murder the prosecutor, Tunnoo.

CRIME ESTABLISHED.—Prisoner Bohurun wounding with intent to murder, and the prisoners Bhikaram and Mootoor aiding and abetting that offence.

Committing Officer.—Captain W. H. Oakes, principal assistant commissioner, Lohurdugga.

Tried before Major J. Hannyngton, deputy commissioner of Chota-Nagpore, on the 29th April, 1856.

Remarks by the deputy commissioner.—It is clearly established by the evidence for the prosecution, that the prosecutor and the prisoners have had disputes about land in the village of

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Case of BHEKARAM appellant and others.

Seelum, and that on the afternoon of Tuesday the 13th November last, while the prosecutor and four others were engaged in cutting the crops in a parcel of land called Bunslungra, the prisoners and many others came to prevent them. By order of the prisoner Bhikaram, the prisoner Bohurun fired a gun loaded with ball at the prosecutor, from a distance of about 28 paces, the ball struck the prosecutor on the left arm, near the shoulder and wounded him severely, but not dangerously. And when the prosecutor's companions were carrying him off, the prisoner Mootoor, who is the brother of the prisoner Bohurun, shot three arrows, none of which took effect, after them.

The prisoners have pleaded *not guilty*, and the defence set up is an *alibi* to which some witnesses have spoken.

The jury find the prisoner Bohurun guilty of wounding with intent to murder, the prisoner Mootoor guilty of shooting arrows and the prisoner Bhikaran guilty of ordering the gun to be fired.

I find the prisoner Bohurun guilty of wounding with intent to murder, and the prisoners Bhikaran and Mootoor guilty of aiding and abetting that offence.

I do not consider that the prisoner Bohurun acted merely by the order of Bhikaram, but of his own malice also.

I therefore sentence the prisoner Bohurun to be imprisoned for fourteen years with hard labor in irons, and the prisoners Mootoor and Bhikaram to be imprisoned for ten years each in like manner.

Remarks by the Nizamut Adawlut.—(Present : Messrs. B. J. Colvin and J. H. Patton.) The prisoner has pleaded an *alibi* throughout, but we see no reason to doubt the evidence for the prosecution, in which he was named from the very first as having been present on the occasion of the crime charged, and as having ordered the gun to be discharged. We reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BINDABUN DOLOE.

Midnapore.

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Case of BINDABUN DOLOE.

Appeal rejected. Prisoner convicted of dacoity.

CRIME CHARGED.—With having committed a dacoity in the house of Oodoychund Punda, the master of Mudoo Munnah, (plaintiff) and having plundered property therefrom.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 22nd April, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty.*" In regard to his identity, I had at first some doubts owing to discrepancies in the approver witness's evidence, in regard to the time at which they first met with him. Their subsequent imprisonment together in the jail, however, gave them ample opportunity to know his person well, and to speak now to his identity. Further, their evidence is so strongly corroborated by the records that those doubts have been fully removed. The evidence of approvers that the prisoner accompanied them and committed the dacoity charged is fully borne out and corroborated by the record. Witness No. 4, the former prosecutor has appeared and sworn to the fact of the dacoity and to the truth of his former deposition. The record further shows that Bindabun Doloe, the prisoner, was not only mentioned in the confessions of Narain Munnah and Muthoor Sen, both of whom were convicted of that dacoity, but also himself confessed before the darogah. He, the prisoner, was sent in for trial to the magistrate. Before that officer he denied the charge but his mofussil confession was duly sworn to by three witnesses. The prisoner was not, however, committed to take his trial before the sessions court, nor can it be gathered from the order for his release on what special ground, if any, did in truth exist, the magistrate hesitated to send him up for trial. The crime charged against the prisoner is, in my opinion, proved, and I sentence him to ten years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with the conviction of the prisoner, or with the sentence passed by the sessions judge. His appeal is therefore rejected.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BEHADUR BAGDEE.

East-Burdwan.

1856.

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Case of BEHADUR BAGDEE.

The Nizamut Adawlut refused to mitigate the sentence passed upon the prisoner convicted of perjury.

CRIME CHARGED.—Perjury, in having on the 25th of March, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the deputy magistrate of Jehanabad, that he was unable to recognize a certain *talee* then produced in court, and in having on the 17th of April, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating sessions judge of East-Burdwan that he identified the said *talee* as the property of Bunmalee Rai, a prisoner, then under trial, such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 5th July, 1856.

Remarks by the officiating sessions judge.—The prisoner was cited as a witness to the defence of one Bunmalee Rai accused of dacoity.

The proof against Bunmalee consisted in the finding of a *talee* and a *gumcha* in his house, which the prosecutor asserted to be a part of the plundered property, and which Bunmalee asserted to be his.

Before the deputy magistrate, Behadur Bagdee, when the *talee* and *gumcha* were shown to him, swore that he did not know to whom they belonged, and at the sessions he picked out the *talee* from a number of articles and swore that it was the property of Bunmalee.

The prisoner has nothing to say in his defence.

The law officer convicts him and declares him liable to *tazeer*.

Concurring in the conviction, I have sentenced the prisoner to three years' imprisonment with labor in irons, but considering that a lesser punishment will be sufficient, I submit the proceedings to the sudder Court, with reference to the provisions of Clause 3, Section 9, Regulation XVII. of 1817, with a recommendation that the term of imprisonment be reduced to one year.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The sessions judge has not stated why he considers that the punishment should be mitigated.

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Case of BEHADUR BAGDEE.

Having considered the proceedings, we are of opinion that the perjury committed by the prisoner was wilful and deliberate, to defeat justice. We therefore uphold the sentence of three years' imprisonment with labor in irons.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND OTHERS

versus

JAIKISHOON DOSS, (No. 2.) RAMNARAIN DOSS, (No. 3.) BHUROSEE RAI, (No. 4.) MUNEERAM DOSS, (No. 5.) GOORDUT RAI, (No. 6.) AND BUNSEE LALL THAKOOR, (No. 9.)

Tirhoot.

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Case of JAIKISHOON DOSS and others.

Prisoner acquitted on grounds of the incredibility of the evidence of the witnesses for the prosecution: though an affray with culpable homicide was shown to have taken place, the charge was not brought home to these particular parties.

CRIME CHARGED.—Prisoners Nos. 2 to 6, and 9, 1st count, riot attended with culpable homicide of Mohur Thakoor, deceased, and in which two other persons Kunhyah Rai, and Laljeet Rai, were severely wounded; 2nd count, riot and forcible plunder of property consisting of 5000 Rs. and other utensils, &c.; prisoner, No. 2, 3rd count, being the instigator and ringleader in the above two counts.

CRIME ESTABLISHED.—No. 2, of being the instigator and ringleader in a riot attended with culpable homicide of Mohur Thakoor, deceased, and in which two other persons Kunhyah Rai, and Laljeet Rai, were severely wounded; prisoners, Nos 3, 4, 5, 6, and 9, of riot attended with culpable homicide of Mohur Thakoor, deceased, and in which two other persons Kunhyah Rai, and Laljeet Rai, were severely wounded.

Committing Officer.—Mr. A. V. Palmer, officiating magistrate of Tirhoot.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 9th April, 1856.

Remarks by the sessions judge.—The origin of the riot with homicide which led to this trial, was a dispute between one of the prosecutors Kumul Doss, and the prisoner Jaikishoon Doss, No. 2, for the "Mohuntee," of Doomree, claimed by both, and the former being in actual possession at the time. At about 7 o'clock, A. M. of the 22nd October last, the latter accompanied by the prisoner Bunsee Lall Thakoor, No. 9, and two others "Pursee Thakoor," and "Khedun Lall Thakoor," (not apprehended) came to the "Usthul" with about 400 rioters at which time the three prosecutors, the witness Hunooman Rai, No. 1, and the deceased Mohur Thakoor were inside, all of whom,

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however, except Kumul Doss, came out, and began to cry out "*dohaee, dohaee;*" on this, the prisoner Jaikishoon Doss, and the other three persons abovenamed with him gave the order to "*mar,*" upon which one "Nurkoo Rai," (not apprehended) dealt the prosecutor Kunhyah Rai, a blow with a *gundasa* on the left arm which completely cut off that hand, and the prisoner Bhurosee Rai, No. 4, and two others "Chedee Rai, and Bheekun Doss," (not apprehended) each struck the deceased Mohur Thakoor, the first with a *gundasa* on the head, Chedee Rai, with a sword also on the head and Bheekum Doss, also with a sword on the back and shoulder, these injuries proving fatal on the third day. The prisoner Ramnarain, No. 3, also struck the prosecutor Laljeet Rai, a blow with a *gundasa* on the back and the other two prisoners, Muneeram Doss, No. 5, and Goordut Rai, No. 6, were seen among the rioters, the charge of plundering entered in the 2nd count, not having been established.

The first witness deposed to seeing the prisoner Jaikishoon Doss, and Bunsee Lall Thakoor, Hunooman Rai, accompanied by "Pursee Thakoor," and "Khedun Lall Thakoor," (not apprehended) come to the "Usthul," with about 400 rioters, and on their giving the order to "*mar,*" "Nurkoo Rai," (not apprehended) cut off the hand of the prosecutor Kunhyah Rai, with a *gundasa*. He also recognized among the rioters, the prisoners Ramnarain Doss, No. 3, Bhurosee Rai, No. 4, Muneeram Doss, No. 5, Goordut Rai, No. 6, and several others (not yet apprehended) and having seen so much, this witness at once went off to the thannah to give information.

The witnesses marginally named* saw the arrival of the rioters, and on the order to "*mar*" being given the cutting off of Kunhyah Rai's hand by the absent "Nurkoo Rai," the wounds inflicted on the deceased "Mohur Thakoor," by the prisoner Bhurosee, No. 4, and the absent Chedee Rai, and Bhekun Doss, which proved fatal after three days; also the wounding of the prosecutor Laljeet Rai, with a *gundasa* by the prisoner Ramnarain Doss, No. 3.

* No. 2, Durvessur Rai.
,, 3, Doorbejoy Rai.
,, 4, Bhyelall Rai
,, 5, Ramdharee Rai.
,, 6, Sobhan Allee.
,, 7, Girdharee Rai.
,, 8, Luchmee Rai.
,, 10, Jhumun Rai.
,, 11, Manah Dhanook.
,, 12, Purshaud Rai.
,, 13, Moorlee Rai.

One witness deposed to seeing only the arrival of the rioters.

These five witnesses saw the arrival of the rioters, and though they did not see the wounding or striking of any one, they depose to recognizing each one or more of the prisoners among the rioters as well as several others not yet apprehended.

The medical officer, Doctor Simpson, who examined the body of the deceased "Mohur Thakoor," deposed regarding the injuries upon it and cause of death to the following effect. It

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was very much decomposed. On the left side of the crown "of the head the skull was cut open to the extent of four inches, the brain protruding. There was also a deep cut about two and a half inches in length on the right side of the forehead, but the skull not cut through. The first wound appears to have been the cause of death, the injuries having apparently been inflicted by blows with a sharp heavy weapon."

All the prisoners throughout pleaded *not guilty*.

The prisoners Jaikishoon Doss and Ramnarain Doss, urged in their defence that the "Usthul," was Jaikishoon's, that it was Mohunt Kumul Doss, and his people who came and plundered it, and that the wounding took place at Mouzah Rukroul on their return, owing to a quarrel among themselves in dividing the spoil.

They called five witnesses, of whom two deposed that it was the rioters of Kumul Doss, who came and plundered the "Usthul," *one* that the wounding took place when the rioters were sharing the plunder, *one* that he saw Jaikishoon decamping, heard of the plundering, and that the wounding took place about dividing the plunder, and *one* knew nothing.

The prisoners Bhurosee Rai, No. 4, Muneeram Doss, No. 5, and Goordut Rai, No. 6, pleaded that the "Usthul" was plundered by Kumul Doss Mohunt and his people; that they (prisoners) were not in the riot, but standing apart, some of them also stating that the wounding occurred about the division of plunder.

Bhurosee Rai called two witnesses, who only deposed to the plundering having been by Kumul Doss and his people.

Muneeram Doss had only one witness to call, who, deposing to the same effect as the preceding prisoner's, two witnesses, added this much more that he saw Muneeram Doss running away.

Goordut Rai called two witnesses to prove that he was standing apart from the rioters, on which point, however, they said nothing.

The prisoner Bunsee Lall Thakoor, No. 9, pleaded an *alibi* and called four witnesses who depose to the improbable, if not impossible, fact of their having seen, and as it were watched, the prisoner four consecutive days and nights in Mozufferpore, implying that he could not, during that time, have gone any where without their knowledge. They, none of them, moreover, appeared to me, either respectable or trustworthy.

The *futwa* of the law officer convicts the prisoner Jaikishoon Doss on the 1st and 3rd counts, viz., of being the instigator and ringleader of the riot as charged in the first count, and the prisoners, Ramnarain Doss, Bhurosee Rai, Muneeran Doss, Goordut Rai and Bunsee Lall Thakoor of being concerned in the riot only as charged in the first count and pronounces them all

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liable to discretionary punishment by *tazeer*. In this finding, on the grounds recorded in my separate English judgment under Act XXXIII. 1854, I fully concur, and I have accordingly sentenced the prisoners with reference to their degrees of guilt to the punishment stated as follows.

Sentence passed by the lower court.—Prisoner No. 2, to be imprisoned for seven years, and prisoners Nos. 3, 4, 5, 6 and 9, for five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present . Messrs. B. J. Colvin and J. S. Torrens.) The prisoners have been convicted, No. 2, of instigating, and Nos. 3, 4, 5, 6 and 9, of riot attended with culpable homicide and wounding. It appears that apprehension of an attack was first reported at the thannah, on the 14th October, and subsequently late on the day of the 22nd idem, its actual occurrence was reported. The darogah went to the spot; and on the way he met the prosecutor Kumul Doss, whose deposition he neglected to take; and when he reached the Usthul he found no one. The 23rd, 24th and 25th were consumed in fruitless inquiries for the wounded, who were said to have been taken to their respective homes; and on the 26th the deposition of Hunooman Rai, who had first lodged information at the thannah on the 22nd, was taken; who stated that the wounded were too ill to leave home. On the 26th the death of Mohur Thakoor was announced by the chowkeedar, and on the 27th his body was sent in for medical examination; on the 28th one of the wounded men Laljeet was found, who deposed that as he, Mohur Thakoor and Kunhyah Rai were sitting early on the morning of the 22nd at the Usthul of the prosecutor, prisoners Nos. 2 and 3, with a band of 400 men, all variously armed, attacked it and them; that Mohur and Kunhyah were struck down first, and he was soon after rendered senseless, and knew not what followed or how he was taken home. The names of the witnesses Nos. 2 and 3, were, for the first time, disclosed, whose evidence as well as that of other witnesses was taken by the darogah on the 29th idem.

Prisoners Nos. 2, 3, 4 and 5, were first apprehended and their answers were taken on the 30th.

The next day the darogah reported the discovery of further evidence. The inquiry was then conducted by the deputy magistrate, Mowla Buksh, who ordered the deposition of prosecutor to be taken, search to be made for the other wounded man, Kunhyah, and independent evidence to be looked for.

The deposition of the prosecutor was first recorded on the 10th November, who described the attack upon the Usthul; the commencement of which he would, by his account, appear to have seen, although he afterwards shut himself up inside; and when Hunooman reported to him the state of affairs, he let him out by the back door, that he might lodge information at the

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thannah. The deponent did not look outside till noon when the disturbance had subsided, by which time the three wounded men had been removed, but where or by whom he did not know. The deputy magistrate sent the papers of the case to the magistrate on the 27th November, who on the 10th December, transferred it to the assistant for further inquiry. The darogah had in the meantime found and taken the deposition of Kunhyah as to the attack on the Usthul, his being wounded, and becoming senseless, so that he could not say what had ensued, or how he had been removed.

The evidence in the sessions court was substantially the same, but we do not credit it. It is quite clear that there had been an affray of some kind, for the violent death of Mohur Thakoor, and the wounding of Laljeet Rai and Kunhyah Rai are indisputable, but that the three men were wounded by the prisoners during an assault on the Usthul is a matter of much doubt. That assault is said to have taken place early in the morning, and yet no report was made at the thannah, only a *coss* off, till late in the day. The prosecutor met the darogah next morning going to the spot, but was not examined, and the names of witnesses were not disclosed then or afterwards till the 28th October, i. e. six days after the occurrence; no clue was found to the places, where the wounded men were, for several days. It was only by diligent search and inquiry on the part of the police that they were traced. Had they, unoffending parties as they were represented to be, been attacked and wounded after the manner described, their cases would have been promptly reported to the police, and an investigation applied for. The evidence also was not forthcoming, as it would have been, had the riotous attack been true. It must have been witnessed by many, who could have been named at once as witnesses, whereas, as already said, two were first named on the 23rd October, and others were subsequently found by the orders of the deputy magistrate and assistant, who were obliged to have recourse to such means to procure evidence. Reliance can never be placed upon testimony so obtained, unless strongly supported by corroborating circumstances, which in this case are totally wanting. We acquit the prisoners and direct their release, as we cannot believe that the witnesses saw what they depose to.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT
versus
PREMCHAND DOOLEY.

Hooghly.

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Case of PREMCHAND DOOLEY.

The prisoner was sentenced as a professional dacoit on his own confession.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunderseeker Roy, deputy magistrate, under the dacoity commissioner,

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 22nd July, 1856.

Remarks by the additional sessions judge.—The prisoner confessed to the deputy magistrate under the dacoity commissioner to having been concerned in twenty-two dacoities; and it is in evidence (witnesses Nos. 3 and 4,) his confession was perfectly free and voluntary. Before me he repeats his confession naming five dacoities as per margin* in which he was engaged, these five being included in the former twenty-two. He adds he was a member of Debee Ghose and Nobin Ghose's gangs.

* Viz. Kishendebpore.
Hauskoopooria.
Ekchaka.
Boalya
Satbanghee.

Of these five dacoities, three are known to have been committed, viz. the 1st, 2nd and 5th. The approver witness Madhub Dass No. 1, confessed to the 1st (Kishendebpore) dacoity, on the 20th January, 1854, when he implicated the prisoner as an accomplice. He testifies now on oath to the same effect. He was also, he adds, in the Hatgatcha dacoity with the prisoner, and, I see, named him there too in his original confession, and to this dacoity the prisoner also confessed before the deputy magistrate, though he professes to having now forgotten all but the five I have specified.

The second approver witness Rychurn Joogee, swears to prisoner having been engaged with him in the 2nd and 3rd dacoities named above, and, on reference to his confessions to those dacoities, both made on the 16th March, 1854, I find that he then too denounced him in both. Both the approvers say the prisoner belonged to several gangs and besides headed a gang of his own.

I convict the prisoner on the charge of having belonged to a gang of dacoits, and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The evidence is complete in this case, both as regards the occurrence of certain of the dacoities charged and the free and voluntary confession of the prisoner, which he has acknowledged in the sessions court, of having been engaged in them. We therefore convict him of having belonged to a gang of dacoits, and sentence him as proposed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BUNDHOO PANDEY.

Shahabad.

1856.

August 6.

Case of BUNDHOO PANDEY.

The prisoner was convicted of perjury and mitigated sentence passed at recommendation of sessions judge.

CRIME CHARGED.—Perjury, in having in the case of Tilluckdharry Pandey *versus* Isreelall, under a solemn declaration taken instead of an oath on the 16th May, 1856, before the magistrate of Shahabad, deposed that Tilluckdharry Pandey "is my cousin;" such deposition being false and contrary to the fact and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Mr. F. B. Drummond, magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 11th June, 1856.

Remarks by the officiating sessions judge.—The circumstances connected with this case are as follows: Tilluckdharry Pandey reported at the thannah on the 19th of April last that the body of a new born child had been found on the edge of some water, near the house of Pertab Lall, which he suspected was that of the widow of Ramsarun, with whom Motee Pandey had been secretly cohabiting for six or seven years, and that whilst he was absent for the purpose of giving notice to the burkundaze at the police chowkee at Simdase, Purbhoo Lall and Gooroopershad Lall and others had removed the body. Subsequently on the 2d May he presented a petition in the magistrate's court to the same effect, mentioning, however, the woman as being the widow of Kali Sahai and accusing Isreelall and others of taking away the body. The case was investigated and was on the 28th May dismissed as false, Tilluckdharry, the accuser, being sentenced to imprisonment for three months. The prisoner, Bundhoo Pandey, was a witness on the part of Tilluckdharry in this case, and in answer to a question put by the magistrate as to his relationship with Tilluckdharry, he stated on oath that he was not his own brother, but merely his cousin, whereas both his father, Bilas Pandey, and Tilluckdharry, swear to his being own brother to the latter. Witnesses Nos. 1, 2 and 3, depose to his having made this statement on oath, and 4 and 5 to his being own brother to Tilluckdharry. The prisoner before me says that on coming to the court to give evidence, he was told that if he said, he was the brother of Tilluckdharry, he would get punished. That he has committed perjury admits of no doubt, the question as to his relationship being put with a view of judging as to how far his evidence was entitled to credit.

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Case of BUNDHOO PANDEY.

The *futwa* of the law officer convicts him of the crime, in which *futwa* I concur. A perjury of a precisely similar nature is recorded in page 259, volume 4, of the Nizamut Adawlut Reports viz. Government *versus* Sumbhoo, October 5th, 1833. As I do not consider the offence committed by the prisoner deserves a sentence of three years' imprisonment, which is the lowest penalty that can be awarded in cases of perjury, I recommend a sentence of one year's imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner has clearly committed perjury, as shown in the sessions judge's report of the trial. We concur in the prisoner's conviction, and sentence him, as proposed to one year's imprisonment with labor.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

RAJOO HAREE.

Hooghly.

1856.

August 6.

Case of RAJOO HAREE

The prisoner was convicted and sentenced as professional dacoit.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 28th May, 1856.

Remarks by the additional sessions judge.—The prisoner, Rajoo Haree, is charged with having belonged to a gang of dacoits. Before the deputy magistrate under the commissioner for the suppression of dacoity he confessed on the 2nd May, 1856, to having been personally and actively engaged in fifteen dacoities, and to-day he repeats his previous confession in the same terms as to thirteen of them. Of these last thirteen dacoities we know that eleven actually occurred, viz. those named in the margin.*

It has been proved, the prisoner's detailed confession in the court below was entirely free and voluntary, by witnesses Nos. 3 and 4, Gopaul Misser and Joynarain Chukerbutty.

Of the two approver witnesses, No. 1, Chunder Haree says he was engaged with the prisoner in ten or eleven dacoities, naming

* No. 1,	Notimgaye in ..	1855
,, 2,	Khanpore, ...	1854
,, 3,	Jolekool, ...	1854
,, 4,	Hodul, ...	1854
,, 5,	Beorpala, ...	1853
,, 6.	Sarungpore, ...	1854
,, 7,	Belgachia, ...	1853
,, 8,	Hajeepore, ...	1854
,, 9,	Koolbarwee, ..	1853
,, 10,	Antee, ...	1853
,, 11,	Sheali, ...	1850

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Case of RAJOO HAREE.

six out of the above list (Nos. 3, 4, 6, 8, 9 and 10,) and he adds prisoner was a regular member of Sona Faqueer and other gangs. On referring to this approver's original confession in the cases quoted by him, I find he then, as now, denounced the prisoner as an associate. *He is the prisoner's own brother.*

The second approver witness Jadoo Dome was engaged with the prisoner in two of the above dacoities (Nos. 3 and 10,) and denounced him in his original confession to each of them. He was, he adds, attached to Sona Faqueer's and other gangs.

In the sec nd dacoity, that at Khanpore, on 5th July, 1854, one Jadoo Haree was arrested and confessed on the 29th July, 1855, when he denounced the prisoner in this calendar, nine months before his apprehension, and another dacoit of the name of Deenoo Haree implicated the prisoner in this dacoity as far back as 8th July, 1854, first at the thannah and then to the magistrate.

I beg to re.ommend that the prisoner be sentenced to imprisonment for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton) For the reasons set forth in the foregoing letter, and with reference to the prisoner's voluntary confession and the proof of the actual occurrence of the dacoities charged, we convict the prisoner of having belonged to a gang of dacoits and sentence him to transportation for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

NUFFER BAGDEE.

Hooghly.

1856.

August 6.

Case of NUFFER BAGDEE.

The prisoner was convicted of having been a professional dacoit.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate, under the commissioner for the suppression of dacoity.

Tried before Mr. H. V. Bayley, sessions judge of Hooghly, on the 19th of June, 1856.

Remarks by the sessions judge.—The prisoner was apprehended on the 11th May, 1856. He was brought before the deputy commissioner for the suppression of dacoity on the 12th, and confessed on the 13th. Witnesses Nos. 3 and 4, attested the confession and state it to have been voluntary. The prisoner *confessed* in the *deputy commissioner's* office to thirty-two dacoities. The prisoner *here pleads guilty* to having belonged

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to a gang of dacoits, and enumerates seven dacoities in which he was engaged, viz. No. 1, Jolekool, No. 2, Khanpore, No. 3, Nobogram, No. 4, Hodul, No. 5, Hajeepore, No. 6, Dodatchea, and No. 7, Satgaon. It will be observed that on being asked whether he wished to say any thing more, he stated that he did not, as he would get Government service. On this, I immediately and strictly enquired who held him out this hope, and whether it was before or after his confession, he stated that it was before his confession, but that he could not remember who told him. He then distinctly stated it was not the *amlah* nor burkundazes of the dacoity commissioner's office. In fact, from his manner of speaking at the time, I feel sure that he meant that it was a general idea, that, by confessing, persons in his position would be better off than otherwise, *not* that there was *any influence* employed to induce him to confess after his apprehension.

Having premised this, I beg leave to state that I think his *confessions* before the dacoity commissioner, and here, *can be trusted.* Referring to Section 6, Regulation IX. of 1793, I proceed to shew that the *evidence* to the commission of the crimes, taken, "as if the prisoner had denied the charge" *supports* the charge.

The record of the case No. 87, page 18, shews that prisoner was *named at the time* of the "Khanpore" dacoity to which he confesses as having been engaged in it. Witness No. 1, deposes to prisoner belonging to a gang of dacoits and having been engaged with him and No. 2, in the Jolekool, and Ateegram dacoities. The *original confession* of witness No. 1, *to these dacoities* was taken on the 16th and 20th December, 1854. The prisoner was *named* in both. The deposition of witness No. 1, here *this* day as to particulars in those dacoities, is in conformity with his confession of December, 1854. Witness No. 2, deposes that prisoner belonged to a gang of dacoits. This witness deposed in his original confession at the commissioner's office that prisoner was engaged with him in dacoities at Jolekool, Hajeepore, Moreaband, Radhagunge, Hodul, Khanpore, Sharungpore and Beerpala. *Here*, this witness mentions the three first, but says he does not recollect at this time all the others he was engaged in with prisoner.

The Court will observe that of these dacoities named in this witness's confession at the dacoity commissioner's office as among those in which prisoner was concerned, the prisoner himself mentions the Hodul and Khanpore ones, and that witness No. 1, named witness No. 2, as at the Jolekool and Ateegram dacoity. Witness No. 2, says he was in both, but in his original confession he did not mention this prisoner as concerned in the Ateegram dacoity. This discrepancy is not enough to affect the general sufficient proof of prisoner's guilt on the charge made.

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Case of NUFFER BAGDEE.

I therefore *recommend* that the said prisoner be *imprisoned for life in transportation.*

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner has pleaded guilty throughout, and it is plain that his confession was free and voluntary and not induced by official influence. The facts of the dacoities having taken place, being proved, we convict the prisoner on his own confession, and on the evidence, of having belonged to a gang of dacoits, and sentence him, as proposed, to transportation for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

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Case of CHUNDER DOOLEY.

The prisoner was sentenced as a professional dacoit.

GOVERNMENT

versus

CHUNDER DOOLEY.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate, under the commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. H. V. Bayley, sessions judge of Hooghly, on the 19th of June, 1856.

Remarks by the sessions judge.—The prisoner was apprehended on the 3rd June, 1856. He confessed at the deputy commissioner's office on the 4th, to being engaged in fifteen dacoities. His confession there has been duly attested here. He pleads guilty here also. He asserts that in neither case was any undue influence used to induce him to confess.

I compared the prisoner's confession here of each separate dacoity, firstly with his confession before the deputy magistrate, then with the confession of the witness, Jugoo Chung, witness No. 1, at the commissioner's office as to each dacoity, and then with the evidence of witness No. 1, here as to each dacoity, and these comparisons have led me to the conclusion that the prisoner and the witness were actually engaged in seven of those dacoities together.

It will be seen that witness No. 1, did not name prisoner as in the Sharingpore dacoity No. 13, (vide No. 17, of his confession at the commissioner's office,) nor as in the Pandooah one (vide No. 14, of his confession at the commissioner's office) to both of which, however, prisoner confesses, and in which, witness No. 1, here stated that prisoner was engaged. But this

discrepancy is to be explained by it not being always possible in a general consecutive confession of dacoity after dacoity (which is the form of confession at the commissioner's office) to avoid the omission of some name.

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Case of CHUNDER DOOLEY.

Page 16 of record No. 19, shews that on the 1st March, 1848, witness No. 1, was arrested and confessed, and named the prisoner as engaged in the dacoity in the house of Gopal Dutt and others of Mooshooria, thannah Banipore, to which prisoner has both here and before the deputy magistrate confessed.

On the whole I have satisfied myself that the prisoner's *confessions and* the corroboration of them by the *evidence* of witness No. 1, *prove the prisoner guilty* of the charge and I *recommend* that he be *imprisoned for life in transportation.*

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner had made a free and voluntary confession in all the courts and the fact of the occurrence of the dacoities, as stated in the letter of reference, is proved by the evidence of the witness No. 1. We therefore convict the prisoner of having belonged to a gang of dacoits, and sentence him to imprisonment for life in transportation beyond seas.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

ASHKUR.

Backergunge.

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August 6.

Case of ASHKUR.

The prisoner was sentenced capitally for the murder of his wife.

CRIME CHARGED.—Wilful murder of Mussamut Phoolshun.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 2nd June, 1856.

Remarks by the sessions judge.—The prisoner, on being arraigned, pleaded *guilty.* The direct evidence of the witnesses noted in the margin* is sufficient to establish the charge upon which the prisoner has been committed. His confessions before the police and the magistrate have been attested.

* No. 1, Matbur Faqueer.
" 3, Abbas Ahkoond.
" 4, Khoshal Khan.

The particulars of this murder are briefly as follows :—

The deceased Musst. Phoolshun was the wife of the prisoner; she was twenty years old and by reputation a chaste woman. She had three children by the prisoner. It appears that the

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Case of ASHKUR.

day before the murder the prisoner and the deceased quarrelled. The deceased upbraided the prisoner because he had not furnished his daughter with certain ornaments on the occasion of her marriage. The prisoner gave his wife a kick which ended the dispute; it was renewed on the day of the murder, when the prisoner assaulted his wife with a *dao* weighing six *chittacks*, a sketch of which is submitted with the record, and inflicted several wounds on different parts of her body of which she died on the same day. The assault was most brutal and cruel, and the provocation, if any, received by the prisoner, does not in any way extenuate his guilt.

The medical officer* deposes that the immediate cause of death was the wound in the abdomen, from which wound the bowels protruded.

* No. 9, Dr. Scanlan.

The law officer finds the prisoner guilty and recommends a sentence of *ki sas*. In this finding I concur, and seeing no extenuating circumstances in the case, I am of opinion that the prisoner should be hanged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) Under the circumstances stated by the sessions judge, which we find fully corroborated by perusal of the record, we convict the prisoner of the wilful murder of his wife, Phoolshun, and sentence him capitally.

PRESENT:

Dacca.

1856.

H. T. RAIKES AND B. J. COLVIN, ESQS., *Judges*, AND J. S. TORRENS, ESQ., *Officiating Judge*.

August 7.

Case of CANTO CHUNG and another.

Prisoners convicted of the wilful murder of the paramour of the wife of the one, and aunt of the other, sentenced to imprisonment in transportation with labor for life.

GOVERNMENT AND RAMKISHEN CHUNG

versus

CANTO CHUNG (No. 1,) AND PAKALLY CHUNG (No. 2.)

CRIME CHARGED.—Wilful murder of Goluck Chung, the father of the prosecutor.

Committing Officer.—Mr. C. Jenkins, officiating magistrate of Dacca.

Tried before Mr. R. T. Scott, officiating sessions judge of Dacca, on the 11th June, 1856.

Remarks by the officiating sessions judge.—It is fully proved by the confessions of the prisoners, and the evidence of the witnesses Nos. 13 to 15,* that the prisoners found deceased at night in the hut where Musst. Bindee was sleeping, and that they

* No. 13, Musst. Bindee.
" 14, Jebun Chung.
" 15, Bharutee Chung.

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there wounded and beat him till he was senseless, and then carried him to the house of Musst. Santo and flung him down in her *verandah*, and that, in the course of a short time, deceased died of the injuries which he had sustained.

It is also fully proved that deceased was in that hut for the purpose of having connection with Musst. Bindee, (witness No. 13,) and that he was struggling with her at the time that he was caught by the prisoners. The prisoner No. 1, is the nephew of the woman, and prisoner No. 2, is her husband

If the case for the prosecution closed at this point, I should consider that it was justifiable homicide, but the confession of the prisoner No. 1, proves him guilty of premeditated murder. He states that his aunt lived in a very unprotected way, owing to the absence of her husband on service; that the deceased took advantage of this to persecute her with solicitations and even violence, that he had spoken to him on the subject, but deceased abused him and said that he, the prisoner, intrigued with his aunt, on which he had had an angry conversation with his aunt, it ended by her telling him to bring her husband and that deceased would be at her house that night. He did go for the husband, and he confesses that he urged on him the necessity of killing the deceased. The two men, unseen by any one, reached the house, and hid themselves in a cow-shed. During the night they heard some one tap at the division wall of the woman's hut, on which she cried out, the man then forced his way in, and laid hold of her, on which they, the prisoners, rushed in. The prisoner further confesses that he struck deceased a blow across the nose and face with a *dao*, that the wounded man succeeded in wresting the *dao* from him and flung it away, and that he, the prisoner, left him and armed himself with another lethal instrument, a *cachey*, and then renewed his attack till the deceased fell senseless, he confesses that it was his intention to kill him though it cost him his own life. This is the confession of a man to deliberate and premeditate murder for which nc adequate reason is assigned. That of prisoner No. 2, is of a man willingly led to participate in an act in which he did not appear to have any very strong personal motive, or to have taken any very prominent part. He states throughout, that it was not his intention to kill deceased, and this to a certain extent is borne out by his not being armed with a lethal weapon.

The confession of prisoner No. 1, gives strong ground for presumption that deceased was enticed to the house that night for the purpose of being murdered. The prisoner No. 2, could not have been consulted on that point, and though he adopted the scheme by lying in ambush for deceased, yet his guilt is less than if he had been an original party to it. This man states that his wife did not intrigue with the deceased, he had therefore no

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wrong to revenge till the visit of the deceased of which he had been previously advertised, and which he might therefore have prevented. Under these circumstances his act cannot be held justifiable.

There is one point which may weigh in favor of the prisoners, I record it, though it is opposed to their confessions. Musst. Bindee (witness No. 13,) denies having sent the message to her husband by prisoner No 1, that deceased would be at her house during the night, and at the time of the murder she ran away for fear of being herself killed. If she was acting in concert with the prisoners, there could have been no reason for her running away. Notwithstanding, the full confession of prisoner No. 1, there may therefore be reasonable ground for the supposition that this woman was in the habit of receiving visits from deceased, and that prisoner No. 1, lay in wait for deceased, knowing that he would come according to his usual custom and not expecting him from any message sent through the woman to entice him to the house. Even if this supposition is correct the murder is still premeditated and carried out with great tenacity of purpose, evinced by the way in which the prisoner armed himself a second time.

In this court, the prisoners admitted having assaulted deceased, but denied the murder, they called two witnesses for their defence, who, however, did not give evidence in their favor.

The *futwa* of the law officer convicts the prisoner, Cantoo Chung (No. 1,) of *kutl-amd* and declares him liable to *akoobut,* and the prisoner, Pakally Chung (No. 2,) of *kutl-shibeh-amud* and also liable to *akoobut.*

I convict both the prisoners of being accomplices in wilful murder, and recommend that the prisoner No. 1, be imprisoned for life in transportation, and the prisoner No. 2, be imprisoned for ten years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, B. J. Colvin and J. S. Torrens.)

Mr. B. J. Colvin.—It appears clear in this case that deceased had a passion for the wife of prisoner No. 2. She says she complained of his solicitations and by her own account she resisted them, even on the night of the fatal occurrence, of which she has, however, given somewhat contradictory versions. She said before the police that on that occasion the deceased forced her to bed with him, in which state they were found by the two prisoners, while her statements before the deputy magistrate and sessions court, were, that she was struggling to escape his attempts to force her to lie with him, when they, hearing the noise of the scuffle, came in. The question is not, however, what relations she had with the deceased, i. e. whether she was a consenting party to his visits, but what the act of

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the prisoners was. The son of deceased has deposed that when he first saw his father in a dying state, at the house of Musst. Santo, his father told him that he had been inveigled into their house by the prisoners on the pretence of smoking; but his story to this effect is not corroborated by that of witnesses Nos. 18 and 19, whose evidence is, that they heard him say that he was assaulted by the prisoners on going to the house of prisoner No. 2. There is nothing to make it appear that his visit was other than a voluntary one for an illicit purpose; and it is equally plain, from the answers of the prisoners, that they expected him to make it; for both say that prisoner No. 2, was called by prisoner No. 1, from the village where he worked, that they might watch and surprise the deceased during it.

The visit took place as anticipated; whether with the free will of the wife or not, is immaterial; but it was voluntary on the part of deceased. There is then nothing but the statements of the prisoners and of the wife as to what followed. It has been already said that the wife, before the police, stated, that the deceased had forced her to bed before the prisoners came inside; but their own account, which agrees with her subsequent statements, is, that they found her struggling with the deceased by way of resisting his efforts to force her to bed. The prisoners do not disguise what ensued. They saw the wife of No. 2, seized by deceased, they attacked him, prisoner No. 1, with a *dao* and prisoner No. 2, with a log of wood, he defended himself, sneered at them for the dishonor he had brought upon them, wrested the *dao* out of the hands of prisoner No. 1, who thereupon ran for a *kachee;* deceased was overpowered and deposited by both prisoners at the house of witness No. 16, in a dying state, where he very soon afterwards expired.

The officiating sessions judge has based his conviction of prisoner No. 1, because his confession gives strong ground for presumption that deceased was enticed to the house on the night in question for the purpose of being murdered, and he considers the act of prisoner No. 2, not justifiable; for, as he believes in his wife's innocence, he had no wrong to revenge, and he might have prevented the visit of the deceased on the night in question.

The opinion has already been expressed that the visit was a voluntary one on the part of the deceased; and if prisoner No. 2, gave his wife credit for fidelity, it cannot be said that he had no wrong to revenge when in this case he must have thought that the deceased visited her against her will. Stress is also laid upon his lying in ambush and allowing the visit to be made; but in a case reported at page 98 of volume 4, Select Nizamut Reports, it will be seen that such waiting to detect parties in guilt was not considered a circumstance of aggravation; and the husband, who attacked both his wife and her

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paramour in the commission of adultery was acquitted, although he had purposely concealed himself armed beforehand to overtake them in the fact. In the present instance the wife was allowed to escape, from which the fair presumption is, that she was believed to be blameless.

The law officer of this Court has been consulted. He has declared the homicide not to have been justifiable, and that the prisoners are liable to *tazeer*.

On consulting, however, the note at page 74 of Nizamut Reports, volum 1. there is ground for doubting the correctness of this *futwa*. It is therein stated that if a person on entering his house find a dissolute man with his wife, and be not able to seize the man from fear of being overpowered, he is justified in slaying the libertine. Again "when the person slain is not seen in the act of whoredom, he must, to justify the killing him, have been found in the house of the husband."

In this case such were the circumstances. The deceased was found in the house of the husband with the wife trying to escape from his embraces, although they had before warned him against continuing his improper proposals. There is nothing to refute their story to this effect; nor is there any reason to discredit it. Prisoner No. 2, is therefore clearly entitled to acquittal.

As regards prisoner No. 1, he was not in the eye of the law* in the same position as prisoner No. 2. He is only nephew by marriage of the wife; and therefore has not legally any justificatory plea. He has admitted too that his intention was to kill the deceased; he went armed with a *dao* in the first place, and subsequently got a *kachee*, which he used freely upon the deceased. Under the circumstances that the family honor had been outraged, the conviction of wilful murder and sentence passed upon him by the officiating sessions judge is not improper. Otherwise a capital sentence might have been called for.

* Section 5, Regulation IV. 1822.

Mr. J. S. Torrens.—It appears to me that the justificatory plea put forward by the prisoners is not at all satisfactorily established, in respect to the prisoner Canto No. 1; and that it is but very doubtfully so, in respect to Pakalee No. 2. It does not, either, appear to me that the facts on which this justification is assumed, are made apparent otherwise than in the confessions of the prisoners themselves; and the statement of the wife of prisoner No. 2, which cannot be relied on, as it was, of course, her object to excuse herself in the circumstance of the deceased adulterer having found access to her house. The prisoners made their confessions immediately after arrest, and it is to be observed that, at the time, they were aware of there being clear evidence to bring home to them the attack on the deceased, irrespectively of any confessions they might make.

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Under such circumstances, we require, even as to the facts alleged in justification, sometimes more than the statements of the prisoners themselves, or of the erring wife. The murders of wives by their husbands, and of the paramours of the former, by husbands, or rivals in intrigue, and of husbands too by their wives, are perhaps the most prevalent in Bengal; a plea of justification is almost invariably put forward directly or indirectly in them all, and very commonly effectually. From this success arises the frequency of confessions to murders of the kind, accompanied by pleas in justification; and it seems to me thus necessary very carefully to consider both whether the facts really exist which are stated in justification; and if they do, whether they can be considered really and properly as legally justificatory or excusatory. In the present case, it is clear from the statements of Bindee, the wife of prisoner No. 2, that she was aware that deceased was to come to her house on the night of the murder: this was ascertained by the prisoner No. 2, Canto; he and Bindee allege that it was by her having informed him; though the truth of these statements, I conceive, must be questioned. But however he may have gained the information, having ascertained that the visit was certainly to occur, he set out to call the husband and to induce him to come home and lie in wait for deceased, that they might kill him; to which deed, for the honor of the family, he admits he urged on the husband. The wife, before the police, stated that the deceased had taken her to bed before prisoners came; before the magistrate and sessions court, she states she was struggling with him; but be that as it may, when the prisoners, both lying in wait, had found the deceased was in the house, they proceeded to give effect to what *avowedly* was the intention of prisoner No. 1, and most probably so of No. 2, viz. to take away the life of deceased. The deceased struggled, and the woman fled; he was attacked by prisoner No. 1, with a *dao;* which, however, he succeeded in wresting from the prisoner's hands; he did not return the attack but flung away the weapon. Prisoner No. 1, then succeeded in finding a weapon equally deadly with the *dao*, and he with this and prisoner No. 2, with a log of wood, inflicted deadly wounds on the deceased; broke several of his ribs and carried him in a moribund state, to fix the crime on another. I am not of opinion, under all these circumstances, that there is any thing justificatory, legally speaking, in the least degree as regards prisoner No. 1. We cannot, I think, hold that his anxiety for the honor of his family, if that indeed was the only cause of his conduct, justifies a planned, deliberate and fully premeditated murder. The precedents in the case of Musst. Ujodee of the 29th October, 1805, and of Ramchand of the 3rd November 1831, do not certainly apply to the crime of the prisoner No. 1; nor do they appear to me to do so as held by my colleague to

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the crime of prisoner No. 2. I am not of opinion that the evidence at all shows that the wife, Bindee, was not a consenting party in sin with the deceased. Steps might have been taken by the husband to prevent that sin, other than lying in wait for, and murdering the deceased. Even Mahomedan law admits a justificatory plea, only when there is sudden impulse; not when there has been long premeditation to perpetrate murder. In the case just quoted in 1805 found at page 74 of vol. I. of the Nizamut Reports, the judges acquitted in consideration of "sudden irri ation," the murdered man being "unexpectedly found with the prisoner's sister." In the case of 1831, vol. IV. page, 98, where both wife and her paramour were set on by the husband lying in wait, there was no actual murder committed or charged: there was the charge of wounding with intent to kill, and this, with the nature of the wounds, a scratch on the wife, and a heavy wound on the arm only of the man when *they were found in the act of adultery*, would appear to have been considered in the acquittal, not simply the justification. When there is a difference as to the question of release, or as to extent of punishment, it is certainly less distressing not to have to recommend the severer course; but as I cannot see any thing to justify prisoner No. 1, I feel it my duty, in consistency with sentences in other cases, and with what the prisoner deserves, to pronounce him liable in my judgment to suffer death. Seeing that there was not so clear proof of premeditation on part of prisoner No. 2, actually to murder, that he had in some degree what may legally be considered provocation, and on the other hand, considering that he might have prevented the visits of the adulterer and interfered in time to prevent his access to the house, I would sentence him to imprisonment for life.

Mr. H. T. Raikes.—This case has been referred to a third judge in consequence of the presiding judges having differed as to the guilt of prisoner No. 2, and regarding the sentence to be passed on the prisoner No. 1.

The direct evidence consists of the confessions made by the prisoners themselves in the mofussil and foujdary, and the evidence of the witness Bindee, wife of the prisoner Pakally Chung. The substance of their statements is, that the deceased had persecuted the woman for some time with his overtures which she had uniformly rejected: that he had once before got into her house at night and attempted to force her, and on all occasions of meeting her, had endeavoured to obtain her consent by threats or solicitation. His object had become known both to the husband and the nephew, and the latter appears to have felt most warmly on the subject; and to have urged the husband to action by telling him that nothing but beating or killing (the word used means both) would put a stop to deceased's intentions.

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On the night in question it was fully anticipated that the deceased would make some attempt. This was expected either from his previous perseverance, and the nephew making known his intent to be absent that night, or the woman herself suspected it and told the nephew; but *it is certain* that both the husband and the nephew concealed themselves in the cow-shed, and the deceased, as expected, made his way into the house where he was followed by the prisoners and beaten and wounded in the woman's bed-room till nearly dead, and then carried to Santo's house, where he died in the course of the night.

There being no doubt that the prisoners killed the deceased, the only question is, do the facts disclosed afford any justification for the acts of the prisoners.

It is pleaded by the prisoners that the woman Bindee was not a consenting party, that the deceased visited her house with the intent of dishonouring her and them, and that they found him in the act of struggling with her when they attacked and wounded him.

There is not a single circumstance in the evidence on record to gainsay the woman's assertion that she was herself blameless. None of the neighbours say that any intrigue existed between her and the deceased, neither her husband nor nephew seem to suspect it, and the deceased himself when accounting for his death-wounds, never admitted that he had gone to visit the woman.

As far as one can judge from the record, there is no ground to believe that the woman had enticed him to her house, or that he entered her apartment with any consent of her own. On the other hand, there is no doubt that the deceased entertained a passion for the woman, and that an opportunity for visiting the woman was purposely made available to him which he took advantage of, and the husband and nephew being on the watch, caught him in the fact. But that there was any actual necessity to treat the deceased as they did, either to protect the woman or their family-honor, cannot for a moment be believed.

They both admit that the woman was chaste, and that they followed the man at once into the house; under such circumstances, it is impossible to suppose that the man could have had time or opportunity to effect his purpose before they interfered, and their presence was in itself sufficient to protect her and prevent any further violence on his part. All that took place afterwards must, I think, be attributed to feelings of anger and revenge which, however natural under the circumstances, cannot, I hold, be pleaded in justification of their acts.

The Mahomedan law allows the sufficiency of such a plea in justification, only when the husband finding the parties together takes the life of one or both of them, as the only means of preserving his own honor. He would also be justified, if the woman

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was likely to be overpowered in slaying her ravisher, but the violent death of the wife or of her paramour under any other circumstances, though it may be palliated by the intense provocation, cannot, I conceive, be wholly justifiable under the provisions of the Mahomedan or of any other law administered by our courts.

In the present case, it is obvious, that there was no such imminent danger of loss of honor to the husband, that it could only be averted by inflicting death on the intruder, but there is no doubt the deceased had given deep and intense provocation to both the husband and nephew both at the moment as well as by his previous attempts on the wife, and this too of a nature for which they could not look for adequate redress from other quarters.

Actuated by these feelings, the prisoners laid in wait for the deceased and under these strong influences they treated him with the re kless violence which terminated his life.

As far then as I can analyze the circumstances of this case, they fail to afford in my opinion sufficient grounds for the husband's acquittal, and I observe by the *futwa* that our Mahomedan law officer is of the same opinion.

I see no reason, however, to think that the prisoners attempted to lay this murder on another, their object in taking the man to Santoo's while he was yet alive, was not to conceal their own acts; for two of their neighbours had already seen what they had done to him. I would convict them both of the murder charged, but as the provocation given was of the most aggravating nature, and a doubt may be reasonably entertained as to their actual intentions in the *first* instance though responsible for the fatal result of their acts, I would sentence *both* to imprisonment for life in transportation.

Mr. J. S. Torrens.—I am still of opinion that prisoner, No. 1, had no justification for the attack on, and murder of deceased, but as my two colleagues are of a contrary opinion, I assent to the mitigated award they fix.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND POORAN DOSS, SERVANT OF MR. MARTIN

versus

DULJEET SING.

Bhaugulpoer.

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Prisoner acquitted, as the evidence brought against him was not considered trustworthy, being that only of the menials of his principal accuser, the evidence of the latter not being adduced.

CRIME CHARGED.—1st count, forgery; 2nd count, fraud, in having given a second *potta* for the same share when the first *potta* was in force.

CRIME ESTABLISHED.—The 2nd count of crime charged.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 21st April, 1856.

Remarks by the officiating sessions judge.—This case was tried by the aid of jury* on the 19th and 21st April, 1856, at Monghyr.

The prisoner was charged 1st count, with *forgery* and 2nd, fraud, in having given a second *potta* for the same share when the first *potta* was in force, to which he pleaded *not guilty.*

* Syud Neamutally.
Lala Gooroopershad.
Lala Bhyro Suboy.

The circumstances are these, the prisoner on the 11th Assar, 1262, F. S. granted *two* leases, which were subsequently registered, to Mr. Martin, agent to an indigo-planter of Bugwanpore Kotee in the Monghyr district, one for mouzah Mehdoulee being a one-anna share on a *jumma* of 70 Rs. 5 annas, receiving *Zurpeshgee* of 150 Rs. from 1263 to 1269, Mr. Martin signing *kubooleuts* on the terms specified, which were delivered to the prisoner. In a similar manner another *potta* for a one-anna share of Selimpore on a *jumma* 17 Rs. 3 annas and *Zurpeshgee* Rs. 50, from 1264 to 1270, both *pottas* being attested by respectable witnesses, Nos. 1 to 7, who bear testimony to the fact of the prisoner having signed the documents produced in court, and received the cash in their presence.

The prisoner denies the execution of the two *pottas* in Mr. Martin's favor and declares they are fabrications, and that he had previously granted on the 5th Kartick 1262, F. S. a lease to one Sisman Singh his connection, one of the shareholders in the estate, 4 annas of mouza Mehdoulee and Hurruckpore from 1262 F. to 1266 F. on a *jumma* of Rs. 98 14 as.; that he is illiterate and it appears that all his pecuniary affairs are transacted by one Kumlaput his authorized agent who signs for him. His witnesses merely bear testimony to the fact of the *potta*

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granted to Sisman Singh being genuine, which the other party has not attempted to dispute. The prisoner was in want of funds to celebrate the marriage of his daughter and had recourse to this fraudulent act to obtain the money, which is a very common practice amongst the natives. As it was clearly established that the prisoner had granted two leases to Mr. Martin, and obtained 200 Rs. by the transaction, being aware, by his own admission, that he had executed another *potta* while the period was still unexpired, I consider him guilty of fraud, in which count the jury convicted the prisoner, and he was sentenced accordingly. The magistrate might have disposed of this case without committing it, the charge of forgery not being in any way established.

Sentence passed by the lower court.—To be imprisoned without irons for six months, and to pay a fine of 100 Rs. in default of payment to a further term of six months with labor, commutable to a fine of 50 Rs. to be paid on or before the 5th May, 1856, or in default of payment to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) We consider that the trial of this case is defective, inasmuch as the primary evidence which might have established the fraud with which the accused is charged, namely, that of Mr. Martin, has been withheld, and the testimony of the other witnesses, apparently his dependants of a low class, we do not deem sufficiently trustworthy to found a conviction upon. We therefore acquit the prisoner, and direct his release.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND
J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND SYUD MUHBOOB HOSSEIN

versus

NIRPUT SINGH (No 6,) LALJEET SINGH (No. 7,) AND GOBIND SINGH (No. 8.)

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Prisoners acquitted on grounds of the suspicions and contradictory nature of the evidence adduced against them and being only that given by the followers of a party who was at enmity with the accused.

CRIME CHARGED.—1st count, heading and leading an armed body of Sontals to plunder, being rebellion against the State; 2nd count, plundering the property of prosecutor and others, valued 1377 Rs. from the prosecutor's cutcherry.

CRIME ESTABLISHED.—1st count, heading and leading an armed body of Sontals to plunder being rebellion against the State; 2nd count, plundering the property of prosecutor and others, valued at 900 Rs. from the prosecutor's cutcherry.

Committing Officer.—Lord H. Ulliek Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 30th April, 1856.

Remarks by the officiating sessions judge.—This case was tried with the aid of a jury at Monghyr, on the 23rd, 24th, 25th, 29th and 30th April, 1856.

The prosecutor, Syud Muhboob Hossein, objected to the first jury* selected being mookhtears attached to the foujdary court, as he had certain complaints to make regarding the conduct of the police, and sherishtadar, and he feared that they would not do him justice, a fresh jury† was appointed composed of wakeels, to whom the prosecutor had no objection, when the trial commenced. The prisoners pleaded *not guilty*.

From the record it appears, that on the 10th January, 1856, prisoner No. 6, brought a maniac, named Murwan Dhanook, to prosecutor's kullian, saying,—"Will you eat this *dhan?*" and again telling him, "that he should eat the grain!" Prosecutor hearing these remarks, began to suspect, that perhaps prisoner would kill Murwan and get up a false case against him. The same day, prosecutor reported the circumstance by an *urzee* to the Jumoe darogah, Mahomed Wasil, who, on the 11th idem, came to his zemindary cutcherry, which is near the Kullian, and after making the necessary enquiry, directed No. 6 prisoner to take care of the maniac, and if he committed any violent acts, he would be held responsi-

* Busuntlal.
Kodyelal
Bujnath Suhoy, mookhtear.

† Chooneelal.
Madhoram.
Thaunnaun Singh.

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ble. On the 18th January, prosecutor, ascertained that prisoners Nos. 6, 7 and 8, also Chunder Singh, Gudree Singh, Duttee Singh, Mungul Singh, &c., Ghatwals, joined themselves with one Mudas Manjee, a Sontal, who was assembling an armed body of Sontals to commit sundry depredations, he did not report these rumours to the thannah, until he had received authenticated information, and as Musst. Pran Kowree, one of the shareholders of Monyah Goureah had forwarded information to the police on the 18th, he thought it was his duty to follow her example, and accordingly he sent an *urzee* to the thannah to the above effect. No notice was taken of this report by the darogah; on the 25th January, he again submitted an *urzee* through the thannah to the magistrate, and sent several times to the thannah, informing the police, that as the Sontals and Ghatwals were then few in number, if they obtained the assistance of the neighbouring zemindar they might easily be apprehended, but no attention was paid to his entreaties. The prisoners having heard, that he had forwarded a petition to the magistrate, on the 26th January, (Saturday) Nos. 6, 7 and 8, armed with *lattees* (and the absentees) with about one hundred armed Sontals, and some low caste "Korah" men, came to his Kullian, and asked the ryots, where the omlah were? Prosecutor, seeing the rebels approaching, fled and took refuge in a cow-shed, and subsequently, heard from those that remained at the Kullian, that the ryots informed them, that the omlah were in the cutcherry. One Tenee Naib Soobah, was with the insurgents. This man, with prisoners Nos. 6 and 7, ordered prisoner No. 8, and Geerdaree (absent) to seize them, they obeyed, and brought the gomastah, Hussun Bux and Bolakeelal Putwaree to the Kullian; the prisoners with the Sontals surrounded these two men and shewed them a *hukumnamah* of Mudas Soobah in which it was inscribed, "This mouza belongs to the Soobah, the Company's Raj is subverted, you must give us some *salamee* and supplies." The gomastah and putwaree through fear, gave each a rupee to the naib soobah, afterwards, they demanded provisions, they were provided with one *maund choorah*, five *seers goor*, two *seers suparees*, and half *seer* of tobacco. They then told them, that they must appear before the soobah, and bring with them plenty of *salamee* and supplies for him. The omlah made excuses, saying, they had not eaten, and wished for a little leisure, which was granted to them, they went into the cutcherry, the walls being made of wicker work, they made an aperture, and effected their escape, and concealed themselves in a *ruhur* field. The prisoners perceiving that they did not return, ordered No. 6, and Geerdaree to go and see what had become of them, on hearing that they had absconded, the Ghatwals, Sontals and others, then went to the cutcherry and plundered all the property belonging to prosecutor, the gomastah and put-

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waree as detailed in prosecutor's petition valued at about 1377 Rs. and on a heap of grain outside the cutcherry, they planted a standard declaring that the *dhan*, cutcherry and estate had come into the possession of Mudas Soobah, they placed it in charge of Jeetum chowkedar, witness No. 2, with this order, that if any of the omlah dared to remove it, they would be killed; after the rebels had effected their object, they went to Mudas Soobah, who had taken up his abode at Chuttee Killaree. In the evening, the ringleaders, prisoners, Nos. 6, 7 and 8, assembled at No. 6's house, and ordered the ryots to attend, through Jeetun Chowkeedar when they were told, that 1000 Sontals and Soobah would arrive, and the grain was intended for their supplies, but instead of the Sontals coming as intimated, the prisoners, the following day brought a body of Mooshurs, Tantees, and Jolahas with baskets, and plundered the whole of the grain which was in and outside the cutcherry, and it was taken to No. 6's house. On the Saturday evening, after the plunder of prosecutor's effects, he went to the thannah, and reported the circumstances, but the darogah again took no notice of his complaint except recording it, in his diary.

Finding that redress through the police was impracticable, he proceeded to Monghyr, and presented a petition to the magistrate, and when a report to the darogah, which he had made, arrived, and the sepoys had killed the *soobahs*, &c., at Sungrampore, prisoner, No. 7, came into Monghyr, when Nawazish Hossein, sherishtadar of the foujdary court, of his own accord, directed the nazir to write on it this order,—"That the darogah was to investigate the case anent the enmity existing between the parties." Being perplexed he forwarded a petition to the judge (myself) and also one to the commissioner of circuit, the judge forwarded a copy of it to the commissioner, who ordered another darogah, Lall Mahomed 1st grade, without the magistrate's knowledge, to proceed to the village and investigate the case, the charge was satisfactorily proved against the prisoners, but before this enquiry took place, the sherishtadar finding that stringent measures were being adopted, the prosecutor states, wrote to darogah Mahomed Wasil, (who is his brother-in-law,) to investigate the case, as about thirteen days had elapsed.

The circumstances were so well known, that in two hours, he made the necessary enquiry and returned to his thannah; he mentioned in his report, that a quantity of the property was in prisoner's house, but he never attempted to recover it. Prosecutor being much harassed, he again went to magistrate when his deposition was taken by the mohurrir, and for several days the sherishtadar kept it back, and would not have it attested by the officiating magistrate, Lord H. Ullick Browne; when it did come to a hearing he frequently represented to the magistrate that the darogah, had written in his report, that his property was in prisoner's

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house, but no attention was paid to this statement; the sherishtadar was using his influence in favor of the prisoners, the darogah's report could not be found in the office, when the officiating magistrate ordered the Meer Moonshee to produce it; after searching, it was discovered attached to other Sontal papers, an order was passed for the prisoner's house to be searched, and about 177 maunds of grain valued 40 or 50 Rs were discovered in No. 6's premises which was placed in charge of a respectable person pending the trial. The prosecutor attributes all the neglect and inattention of the police in this case to the misconduct of the foujdary sherishtadar who is a brother-in-law of the darogah, and also to the influence he possesses, which, in his official capacity, he has used to annoy him, and side with the prisoners, who are the maliks of the mouza Mawreah, which he has farmed from them on a lease for twenty years from 1258, F. on a *zerpeshgee* bond of 1500 Rs., besides another lien for money borrowed to the extent of 400 Rs., the interest of which is paid annually from the collections. So far from there being any enmity existing between himself and the prisoners, the reports of both darogahs, Lall Mahomed and Mahomed Wasil, are quite sufficient proof to the correctness of the prosecutor's statement which subverts the sherishtadar's intention to prove enmity, as no former reports from the police had been received supplying such information, so the sherishtadar's motive is most apparent, for the officiating magistrate had only taken charge of the office on the 22nd January, and on the 28th idem, the obnoxious order to the darogah was written, so he could know nothing of former proceedings The prosecutor further declares, that the officiating magistrate did not dictate the order, the sherishtadar made over the report to the nazir, and instructed him what to write, Moonshee Abdool Summud and Roushunlal peshkar are witnesses to these facts. As the *urzees* dated 18th and 25th January, 1856, which prosecutor sent through the police to the magistrate, were not with the *misl*, I called on the magistrate to produce them, but up to this date, these, with other important documents, are wanting to make the investigation anent the sherishtadar's misconduct complete; when they are received, a proceeding will be forwarded to the commissioner of circuit requesting him to pass the necessary orders regarding him and the darogah.

With reference to the evidence, witnesses Nos. 1, 2, 3, 4, 5, 7, 24 and 25, have deposed most consistently and without the least deviation to the circumstances detailed by prosecutor; they identified the prisoners as ringleaders and actively engaged in the plunder, and saw them taking various articles belonging to prosecutor, such as a gun, "*kullumdan*," sword, grain, &c. The two principal witnesses, viz., the gomashta and putwaree were not named in the calendar, I postponed the trial, considering

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their attendance essential. The witnesses stood the cross-examination of the court, the jury and counsel for the defence, and in no important particular did their evidence vary, and I consider every reliance can be placed in their deposition. No. 26, Hefazutally, thannah Mohurir, deposes to the apprehension of prisoner No. 8. No. 7, appeared before magistrate as detailed above, and No. 6 was apprehended by witness No. 27, Fukeer Mahomed Burkundaze. The mohurrir weighed the grain found in No. 6's house, which amounted to 177 maunds ; he further states, that notwithstanding prosecutor reported the plunder to the darogah, he merely took down what he stated, which was recorded in the diary, but not on oath, there was no separate deposition ; he told the darogah, it was irregular not to take one, but the darogah considered it quite unnecessary, nor did he proceed to the village, to ascertain the correctness of prosecutor's statement, it was not until about twelve or thirteen days afterwards, when an order was received from the magistrate that he attempted to make any enquiry This is confirmed by witness No. 27, Fukeer burkundaze. The mohurir adds that in heinous cases all prosecutors or informants' statements are taken on oath, but it is not necessary to administer the oath to those whose statements are recorded in the diary, nor do the informants sign them ; he is not aware that this practice is sanctioned by any regulation or rule, he was indisposed, and the darogah wrote the prosecutor's representation.

I called for the diary, when a copy, which was in the magistrate's office, was produced on the 27th January, merely the statement of prosecutor is recorded and forwarded to magistrate for instruction, contrary to Regulation XX. of 1817, which gives the darogah full power to act without a reference to superior authority. It remains to be proved how far the mohurir's statement is correct anent the darogah's want of knowledge in his duties, for he has not yet had an opportunity to refute the mohurir's allegations, which will be settled by order of the commissioner of circuit. The witnesses to the apprehension were not summoned by this court, but attended under orders of the magistrate during the trial.

The prisoners in their defence before the sessions plead, that they are the maliks of mouza Mowreah, they granted a lease of their estate to the prosecutor and his brother Torab Hossein, who have disputed about their shares, and because they allowed one Thummun Singh recently to reside as gomashta on the part of Torab, on the estate, prosecutor on the 10th January, 1856, complained at the thannah against prisoner No. 6, but finding he did not succeed in his malicious intentions, he has got up a false case during the Sontal insurrection against them. The grain found in his house belongs to all the prisoners, they cultivate about twenty-five *beegahs* each of land in the estate, and this is the produce.

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The witnesses for the defence merely state, that there was no plunder, nor did the Sontals come on to the estate, otherwise they would have seen them, and allude to the dispute between the brothers, thus attempting to prove, that the investigation of two darogahs is false and fabricated, and that their depositions are correct and should be relied on, whereas the evidence for the prosecution satisfactorily proves, that the prosecutor for the last six years, has had sole possession of the estate, while his brother Torab, has been in the enjoyment of other estates in lieu of mouza Mowreah, according to an amicable arrangement between the brothers, and the dispute has only recently occurred in which the prisoners can have no interest, as long as the terms of their agreement are fulfilled, which have not been violated, nor the subject mooted in their defence, consequently, I deem their excuses frivolous, and unworthy of consideration.

The jury return a verdict of guilty against the prisoners, in which I concur and sentence accordingly.

Sentence passed by the lower court.—Each to seven (7) years' imprisonment with labor and irons and under Act XVI. of 1850 to pay jointly and severally a fine of 827 Rs. as compensation for the loss sustained by Mahboob Hossein *alias* Hooree, and 43 Rs. to Bolaki Lal and 30 Rs. to Hosseinbux in all 900 Rs

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) The prisoners are the maliks of mouzah Mowreah, of which the prosecutor jointly with his brother, Torab Ullee, holds a *teeka* lease. The prosecutor accuses the above three maliks of having headed an armed body of Sontals in an attack on his cutcherry, on the 26th January last, having seized the gomashta and putwaree,and proclaimed before them and the witnesses from Nos. 1 to 7, by reading a proclamation, stated to have been handed to the prisoner, No. 6, by the Sontal leaders, "That the Company's reign was at an end, and that the grain and property, which they seized, were required for the Sontal forces;" that the prisoners accompanied by one hundred men, returned the next day and gutted the cutcherry and grain stores. All these occurrences and the identification of the prisoners in the act of rebellion and plunder, as above described, are deposed to by witnesses Nos. 1 to 7, and Nos. 22 and 25, as having been witnessed on two consecutive days. These witnesses are all dependants of the prosecutor; and from this circumstance alone, setting aside the extreme improbability of the occurrences to which they depose, their evidence would be liable to suspicion. It is not likely that had there been an attack by an armed body of Sontals, such as described, the witnesses would have been permitted to remain in a position to watch so accurately, as they depose, the acts of the several prisoners at the time of the alleged plunder. The witnesses profess to detail the very articles which each of the several

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prisoners is represented to have carried away from the house, in a manner which at once discloses that they were deposing to a made-up story: whilst in the details they fall into numerous contradictions and discrepancies, as respects their several depositions. It is further to be observed that it is exceedingly improbable, if their story had been true, that recognition would have been confined to these prisoners, who appear to have been at variance with their Teekadars, and that none of the Sontals, with whom they are said to have been associated, should have been arrested. The first seven witnesses, in giving details of the proceedings of the prisoners, which would identify them with the act of rebellion on the part of the Sontals, depose that they brought the Sontalee standard, and formally erected it at the cutcherry of the prosecutor; while the evidence of the witnesses Nos. 22 and 25, which was only taken before the sessions judge at a much later period, omits this important point; taking into consideration all these circumstances, together with the fact that there is a dispute between the prosecutor and his brother and co-sharer, Torab Ullee, in which the prisoners appear to have taken a part, we are of opinion that the evidence is not sufficiently trustworthy to sustain a conviction. Had the prisoners, who are landholders, been guilty of the crime of which the sessions judge has found them guilty, they would have been deserving of a much severer sentence than that inflicted upon them. We acquit the prisoners and direct their release.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

Midnapore. 1856. August 9. Case of ANUNDEE JANA.

GOVERNMENT

versus

ANUNDEE JANA.

Prisoner convicted of belonging to a gang of dacoits on the evidence of approvers supported by corroborating circumstances. Sentenced to transportation for life.

CRIME CHARGED.—1st count, having committed a dacoity in the house of Mudun Adhikaree in the month of Boysack, 1242; 2nd count, having committed a dacoity in the house of Komul Puraie; 3rd count, having committed a dacoity in the house of Needheeram Ghora; 4th count, having committed a dacoity in the house of Bindabun Shee, nephew of Bissumber Shee; 5th count, being by profession a dacoit and having belonged to the gang of dacoits, under Sirdars Soonder Kamar, Moocheeram Khara, and Persad Khara, convicts.

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent, and assistant to the dacoity commissioner, and joint-magistrate at Midnapore.

1856.

August 9.

Case of ANUNDEE JANA.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 28th May, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty*" and in his defence states he is a cultivator of the soil and does not live by dacoity, that the approvers have trumped up this case against him from enmity, of which his witnesses are aware. The evidence in this case was completed on the 10th May, 1856. But owing to the original record of the dacoity in Mudun Adhikaree's case not being forthcoming, I on that day, required the attendance of some witnesses to the fact. Two of them appeared on the 28th instant, and gave their depositions proving the occurrence of the crime.

The witnesses to the identity of the prisoners are four approvers, one of them is prisoner's father-in-law, and from the evidence of all, no room to doubt the identity of the prisoner is left.

The approver v'tnesses denounce him as having gone forth with gangs of dacoits and committed the dacoities charged against him, and in support and corroboration of their testimony, the records in three cases* are laid before the court; in the other, the dacoity in Mudun Adhikaree's, a recent enquiry by the police darogah was sent up, and Lu'heenarain, the son of Mudun Adhikaree was cited as a witness and his evidence taken in this Court. The original record appears to have been sent to the sudder court attached to a civil suit, Rajah Lukheenarain *versus* Mudun Adhikaree and others, suit for defamation. From the copies kept in this court a dacoity appears to have occurred; that no doubt, however, might remain, certain witnesses, as I have before stated, were summoned, and of them Shamutullah and Ramgopal Adhikaree have given their evidence and fully prove the fact. From the record in Komul Paraie's case, it appears one Nimaee Kanda was apprehended and on 4th August, 1837, confessed and named as his accomplices Anundee Jana the prisoner, approvers Nos. 1, 2, and 3, Soondur Kamar and others.

The prisoner was arrested on this charge and in his answer, dated 8th August, 1837, gives his father's name as Rughoo (this is proved to be false by his answer now given, and by the approver's evidence). He then admitted he was seized in Mooteullah's dacoity.

In Needheeram Ghora's case, the record shews Anundee Jana, the prisoner, was arrested as a suspicious character.

In the record of the remaining case, that of Bindabun Shee, is the confession of one Nundo Komar given on 29th July, 1849 before the police, and he then named Anundee Jana.

* *Nuthee* No. 105, dacoity in the house of Komul Paraie.

Nuthee No. 371, dacoity in the house of Needheeram Ghora.

Nuthee No. 372, dacoity in the house of Bindabun Shee.

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Case of ANUNDEE JANA.

With that record is the confession also of Soondur Kamar taken before the darogah on the 1st August, 1849, he likewise names Anundee Jana as one of the gang. Anundee Jana was apprehended in that case and in his answer given at the thannah, dated 3rd August, 1849, gave his father's name as *Moorolee*, not Rughoo Jana.

In regard to the defence of the prisoner, there was, no doubt, misunderstanding between him and Moocheeram Khara witness No. 2, which resulted in a quarrel, owing to his having resisted sending his wife to Moocheeram, her father's house. The prisoner evidently had good reasons for his objections, but this cannot counteract the evidence brought to bear on him in the present case, which, in my opinion, is ample for his conviction. I can see nothing in it to warrant his acquittal, I therefore convict him of having belonged to a gang of dacoits and would recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We consider the conviction of the prisoner by the sessions judge fully borne out by the evidence for the prosecution. The approvers, witnesses, particularize the circumstances of the dacoities in which they were severally concerned with the prisoner, and their statements are corroborated by the record of the investigations when they occurred, and the confessions then made, in which the prisoner's name is mentioned. His own witnesses before the sessions show, by their depositions, that he has long been a notorious character and reputed dacoit; and in the present trial, it is proved also by the depositions of the prisoner's witnesses that he had misstated the name of his father, in order to avoid identification. We sentence him as recommended by the sessions judge.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND GOBURDHUN GHOSE

versus

NOBIN BAGDEE CHOWKEEDAR (No. 4,) DOORGACHURN DOME CHOWKEEDAR (No. 6,) RAMLOCHUN BAGDEE (No. 8,) OCKOOR BAGDEE (No. 9,) KALACHAND BAGDEE (No. 10,) OMRITORAJ ALIAS UNOOP CHUNDLAL (No. 12,) DOORGAMONEY BAGDINEE (No. 13,) AND THAKOO BAGDINEE (No. 14.)

East-Burdwan.

1856.

August 11.

Case of NOBIN BAGDEE CHOWKEEDAR and others.

The wives of two prisoners were acquitted as they were not considered guilty recipients of the stolen property.

CRIME CHARGED.—1st count, Nos. 4 to 12, having committed a dacoity in the house of the prosecutor, Goburdhun Ghose, and plundered therefrom property in cash Co.'s. Rs. 312-9-9, in gold and silver ornaments, Co.'s. Rs. 474, in brass utensils Co.'s. Rs. 86-10-6, and in clothes Co.'s. Rs. 74-2, making a total of Co.'s. Rs. 974-6-3; 2nd count, Nos. 8 to 14, knowingly having possession of a portion of the property acquired in the above dacoity.

CRIME ESTABLISHED.—Nos. 4, 6, 9 and 10, 1st and 2nd counts and Nos. 8, 12, 13 and 14, 2nd count only.

Committing Officer.—Abdool Latif, deputy magistrate of Jehanabad.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 8th April, 1856.

Remarks by the officiating sessions judge.—Prisoners, Nos. 4 and 6, were recognised at the time of the dacoity.

Some of the plundered property was found in the houses of Nos. 8, 9, 10, 13 and 14, and 13 and 14, partially confessed.

Some of the plundered property was found in the house of No. 12, one article was concealed under a *choolay*.

Sentence passed by the lower court.—Nos. 4 and 6, to be imprisoned for fourteen years each, and Nos. 9 and 10, ten years each in banishment with labor in irons. No. 8, to be imprisoned for five and No. 12, for four years with labor in irons. And Nos. 13 and 14, to be imprisoned for three years each with labor suitable to their sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We see no reason to interfere with the conviction and sentence as regards prisoners Nos. 4, 6, 8, 9, 10 and 12, the evidence against whom there is no cause to discredit. Prisoners Nos. 13 and 14, are the wives of Nos. 8 and 9; their husbands brought home the stolen property, of which they were not apparently the guilty recipients. We acquit them and direct their release.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND
J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND ANOTHER
versus
SOOKRAM PANDEY (No. 1,) AND BOGWAN PANDEY (No. 2.)

Sarun.

1856.

August 11.

Case of SOOKRAM PANDEY and another.

Prisoner found guilty by sessions judge of culpable homicide sentenced to imprisonment in banishment for fourteen years. The Court remarked that the commitment should have been for murder.

CRIME CHARGED.—No. 1, culpable homicide of Hurruk carpenter, No. 2, aiding and abetting in the same.

Committing Officer.—Mr. J. F. Lynch, deputy magistrate of Sewan.

Tried before Mr. Henry Atherton, sessions judge of Sarun, on the 3rd June, 1856.

Remarks by the sessions judge.—This is a case of culpable homicide from illegal violence used for the purpose of extracting money from the deceased, Hurruk carpenter. The prisoners, Sookram, No. 1, and Bogwan, No. 2, are peadahs in the employ of Mr. James, indigo-planter and thannadar of mouzah Nawtun, and were employed with the tehsildar, Jugdealoll, in collecting the rents of the mouzah. On the morning of Friday, the 28th March last, the peadahs and another man, Poorun, witness No. 19, took several of the ryots and the deceased with them to the tehsildar at a Mutt, close to the village. Payment of rent was first of all demanded of some of the Rajpoots and better castes who declined giving more than their dues, and the turn of the deceased then came. He said he only owed two rupees and offered that sum, which was declined. Four rupees were demanded and he was told that if the others had got off he would not. On his refusing to pay, the tehsildar told the peadahs to take him away and get the money out of him as they could, and accordingly Bogwan, No. 2, took him away and gave him a blow with his shoe; Sookram, a tall powerful man, first of all striking him with his long heavy *lattee* on the feet, and then giving him a blow on the head which fractured the skull, damaging the brain and causing death within a few hours. The outrage was witnessed by witnesses, Nos. 1 to 11, and Meer Hingun, No. 18, native doctor, states that death must necessarily have been the result of the fracture. The wounded man was led staggering to his home very near the Mutt, and he was able to tell Poorun who

Poorun Gorait, No. 19.

No. 1, Hurkoo Rai.
„ 2, Beenuk.
„ 3, Sewram.
„ 4, Seesmun.
„ 5, Doólar.
„ 6, Rudhun.
„ 7, Hurdyal.

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No. 8, Keswar.
„ 9, Lukraj.
„ 10, Bowee Kandoo.
„ 11, Sujna.
„ 18, Meer Hingun.

saw him after the assault, what had happened. Notice was immediately sent to the thannah, the body being brought to the Mutt after death by the villagers, who secured the prisoners. The prisoners deny the charge and plead an *alibi*, and in favor of them a few of their fellow-servants and the residents of the same village with Sookram give evidence. They, the prisoners, state that on their going to the village on the afternoon of the day on which the assault is said to have taken place, they were secured by the villagers from enmity, the ill-will on the part of the villagers being caused by their lands having been taken possession of for indigo, Mr. James having in Kartic last, got a *thicka* of the mouzah, vide statement of tehsildar and the putwaree, Pursoo Rai, on their apprehension. When first questioned, Sookram said Hurruk had died in a fit, but this explanation is not now given, and it is worthy of remark that in no other way than that stated by the witnesses for the prosecution is the death of Hurruk attempted to be accounted for. If, however, Hurruk's death had not been caused as stated by me, we may be sure the factory people would have discovered how it had happened. The tehsildar, Jugdealoll, ought clearly in this case to have been committed by the deputy magistrate as his order to the peadahs caused violence to be used by them. The chief criminal in reality thus, as often happens under the operation of Act XXXI. of 1841, escapes altogether, from having been improperly acquitted, and it is in this way that this Act does so much mischief. I concur with the law officer in convicting the prisoners as charged. Their guilt equals that of those concerned in the case reported in my letter No. 57, of the 24th March, 1855, and I therefore record a sentence of seven (7) years' imprisonment with labor in irons against Bogwan, No. 2, and recommend that the court pass, as in the case alluded to above, a sentence of fourteen (14) years' imprisonment with labor in irons against prisoner, No. 1.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The reference only applies to the prisoner, No. 1, who, the judge recommends, should be sentenced to fourteen years' imprisonment, quoting as a precedent the case of Ablaq Rai and others, page 393 of the Nizamut Decisions for April, 1855, where in a quarrel between two parties respecting a lease, one of the disputing parties was struck down by the other. We do not, however, perceive the similarity of the two cases. In the present, the deceased was illegally seized by the peadahs of the ticcadar with the view of forcing him to pay rent, which he did not acknowledge to be due; on his having consented to pay a part and refusing to pay that which the

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peadahs, under orders of the tehsildar, were endeavouring to exact from him, he was taken by the peadahs from the place where he was to another close at hand, where they told him that he would be compelled to pay; on his still refusing, one of them, No. 2, seized him by the hair and beat him on the back, and the other prisoner, No. 1, first struck him with a heavy *lattee* on the feet, and then with the same weapon dealt him a deliberate and deadly blow on the head, from which he almost immediately expired. Considering the illegal seizure of the deceased, the object for which he was maltreated and the deliberate nature of the blow dealt by prisoner No. 1, we think the commitment should have been made on the charge of murder, when we should have passed a severer sentence: as it is, we sentence the prisoner, No. 1, to fourteen years' imprisonment in banishment, with labor and irons.

PRESENT:

B. J. COLVIN, ESQ. *Judge*, AND J. S. TORRENS, ESQ. *Officiating Judge.*

GOVERNMENT AND DINONATH CHUCKERBUTTY

versus

BINDARAM MUNDUL (No. 1,) AND KOWSHULI BEWA (No. 2.)

Jessore.

1856.

August 11.

Case of BINDARAM MUNDUL and another.

Sentence of the sessions judge to six years' imprisonment with labor confirmed on a prisoner found guilty of the theft of 2500 Rs. Second prisoner released as there was no proof of her complicity in the crime.

CRIME CHARGED.—1st count, No. 1, theft of 2,500 Sicca Rupees, the property of the prosecutor, Dinonath Chuckerbutty; 2nd count, Nos. 1 and 2, knowingly having in their possession a portion of the stolen money.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 24th April, 1856.

Remarks by the officiating sessions judge.—The case was tried with the aid of a jury under Clause 1, Section 4, Regulation VI. of 1832, who found a verdict of guilty on both counts against prisoner, No. 1, but *not guilty* on prisoner No. 2.

The circumstances of the case are as follows:

The prosecutor states he had inherited certain sums of money which, for more secure protection, he was in the habit of concealing under ground, only keeping about him such sums as were immediately required for the purposes of traffic he was engaged in. Either in the month of Aghran or Poos 1256, he concealed, under the wooden steps (about two and a half *haths* underground)

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Case of BINDARAM MUNDUL and another.

leading to a *poojah* house in his premises, the sum of Rs. 2,500, consisting entirely of old Sicca Rupees (the most of which were of the 17 annas standard, the lesser portion of the 16 annas) packed up in an earthen jar. About 13th Poos last, he had occasion to make use of this money and proceeded to the spot where he had hid it; but on digging up the earth, nothing could be discovered of the money, a piece only of the earthen pot remaining. After a little consideration it occurred to him, the prosecutor, that the wooden steps had been renewed, and he enquired of his domestic servants, which of him it was that changed and repaired the steps; they informed him the steps had been altered and repaired by the prisoner No. 1, who was formerly a servant of the prosecutor and after the last *poojahs* at which time he had changed the steps, had left his master's service of his own accord paying back such advance of wages as he had received. The suspicions of the prosecutor being thus aroused, he enquired in the neighbouring bazar if any of the shopkeepers had received, in the course of their business any sicca rupees, and discovered, from witnesses Nos. 20, 21 and 24, that prisoner No. 2, had, between the 10th and 12th Aghan last, changed two old sicca Rupees at the shop of witness No. 20, and one sicca Rupee at the shop of witness No. 21. Feeling confident these sicca rupees were part of his property, prosecutor reported his complaint to the police, who took up the enquiry, the same being conducted by the police jemadar as the darogah was absent.

The police jemadar proceeded at once to the house of prisoner No. 1; but not finding him there, called upon his two brothers and prisoner No. 2, his sister, who lives with him to point out if they knew any thing regarding the stolen property. After some little hesitation prisoner No. 2, admitted that her brother, prisoner No. 1, did once bring home an earthen jar containing rupees, which he said he had discovered in the prosecutor's premises, that at first they hid the money under ground in their house, but hearing prosecutor was instituting enquiries they thought it advisable to transfer the money from under their house to a place of concealment underground near the house of one Ram Neekasee, where it now was and could be found. The police then proceeded to the spot and after digging up the earth recovered Sicca Rupees 1,940 composed of the 16 and 17 annas standard. Before the deputy magistrate of Khoolnea the case was fully gone into, and the admissions of prisoners Nos. 1 and 2 duly recorded, the former having been arrested under the order of the court. The witnesses to the prosecution all fully corroborate the statements of the prosecutor and attest the circumstances attending the recovery of the property, and the arrest of prisoner No. 2.

The prisoners Nos. 1 and 2, plead *not guilty*, but in their

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subsequent statement of defence acknowledge the correctness of th admissions they made before the deputy magistrate of Khoolnea, which they again reiterate in all material points. The witnesses examined in their behalf, give evidence to the fact of having heard prisoner No. 1, admit on the occasion of his going to do *poojah* in Assin last, that he had discovered some treasure, but of the amount they were ignorant.

The admission of prisoner No. 1, in this court is, that he found on 3rd Bhadooy last, while digging on the old foundation of what was a Dhoobee's house, situated 3 *russees* from prosecutor's house, an earthen jar containing 2,000 old Sicca Rupees which he at once took to his own house and taking out of the amount 8 Rs., concealed the remainder again under ground in his dwelling. Some time after fearing the landholder had learnt of his discovery, he again removed the money from its place of concealment to another under a *bhet tree,* near the house of one Ram Neekassee.

That prosecutor once demanded a share in the proceeds of his discovery, which he, not being willing to give, the prosecutor has instituted this complaint to get his revenge.

The admission of prisoner, No. 2, in all material points corroborates that of prisoner No. 1, and in addition mentions that on the police maltreating her, she pointed out to them the spot near Ram Neekassee's house where Rs. 1,940, were discovered by the police.

The charge of maltreatment formed a separate commitment, calendar No 2, of March, 1856, or trial No. 1, for April, 1856, but from insufficiency of evidence to convict, the prisoners were released, their trial and the present case being taken up together.

From the above evidence for the prosecution, the admission and defence of the prisoners, and the strong circumstantial evidence in support of the charge, I feel no hesitation in concurring in the verdict found by the jury as regards prisoner No. 1. I consider, however, both prisoners Nos. 1 and 2, guilty on the counts they have been respectively committed on. Prisoner No. 1, with having stolen Rs. 2,500, the property of the prosecutor and again both he and prisoner No. 2, with knowingly having in their possession a portion of the stolen money, and on this conviction I sentence prisoner No. 1, to four years' imprisonment and in lieu of stripes, two more years, total period of imprisonment six years with labor and irons. Under the provisions of Act XVI. of 1850, I also inflict on prisoner No. 1, a fine of Rs. 594-2, which when realized is to be paid to the prosecutor, Dinnonath Chuckerbutty.

I sentence prisoner No. 2, to four years' imprisonment with labor suitable to her sex.

The cash recovered, Sicca Rs. 1,943, is to be restored to the prosecutor.

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An explanation was called for, from the magistrate regarding the non-insertion of the grounds of apprehension of prisoner No. 2, in the calendar. A copy of that officer's reply is filed with the proceedings. Considering the police report on the subject, I do not understand the difficulty the magistrate makes mention of for not fully complying with Circular Order No. 14, dated 9th June, 1848. I must remark also an irregularity on the part of the deputy magistrate of Khoolnea. According to the records prisoner No. 1, presented himself at his court on the 2nd January, 1856, to make a petition. An order was given without any valid reason being assigned, that as the prisoner was charged with theft now in course of enquiry, he was therefore to furnish 50 Rs. security for his appearance. Ultimately on the 11th January, 1856, prisoner's defence and admission were taken down, and he was consigned to the *hajut tajveez* without any proceeding on the record being held.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B J. Colvin and J. S. Torrens.) We see no reason to interfere with the conviction as regards prisoner No. 1, Bindaram Mundul. His statement is highly improbable in itself. He owns to having found the money in a manner which gave him no right to it. He suddenly left the prosecutor's service; and it is so consistent with the native usage to bury money, that there is no reason to disbelieve prosecutor's story that he had in this way concealed it. We therefore reject the appeal of No. 1. The female prisoner cannot, however, be convicted, for according to the account prisoner No. 1 gave her of the discovery of the money, she had no reason to suspect its acquisition by theft. We acquit her and direct her release.

PRESENT:
R. J. COLVIN, Esq., *Judge*
AND J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT
versus
CHUNDERKANT RAHA.

Dacca.
1856.
August 14.
Case of CHUNDERKANT RAHA.

Prisoner charged with wilful murder released, as both the evidence and the confessions made by him before the police were not trustworthy, appearing to have been obtained by undue means.

CRIME CHARGED.—Wilful murder of Oma Peshagur.

Committing Officer.—Mr. S. F. Davis, officiating joint-magistrate of Furreedpore.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 23rd May, 1856.

Remarks by the officiating sessions judge.—I shall first give a brief statement of the events which occurred in the village on the discovery of the murder, and shall then review the evidence by which the guilt is fastened on the prisoner.

On the night of the 3rd March last, deceased was found murdered in her house, and an effort was then made to apprehend the prisoner, he escaped, but was captured on the following afternoon (the 4th,) in a deserted house belonging to a relative of one Haran Roy. On that day, he denied all participation in the murder, the darogah ordered his house to be searched, but as it was a stormy evening, the search took place on the following morning (the 5th). A shoe and *dao*, both said to be blood-stained, were found in the prisoner's house, and a *dhoty* and *chuddur*, blood-stained, were found in a straw stack just outside the premises. In a small pool, on the bank of which the house was situated, certain silver ornaments, recognized as the property of deceased, were also found. The prisoner claimed the *dhoty* and *chuddur*, but stated that he could neither account for its being bloody or for its being hid in the straw, he disclaimed all knowledge of the ornaments. The darogah took his answer, formally filed the *chullan* or despatch and made him over to a burkundaz to be taken before the joint-magistrate. That night they were detained by storms. On the following morning, the prisoner made a statement to the effect that he and Eshan Roy and Haran Roy, on the night of the 3rd, were drinking with deceased, and that Haran Roy murdered her, on which he had ran away, he still claimed the clothes as his own, and disclaimed having had any thing to say to the ornaments.

The witnesses, Nos. 12 to 15, give evidence strongly against the prisoner.* Their testimony was not promptly given, but I see no good reason to reject it. The

* No. 12, Ruttun Peshagur.
,, 13, Dilver ditto.
,, 14, Ukoormoney ditto.
,, 15, Buddun ditto.

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prisoner in this court states, that he has been made the victim of a conspiracy, because he refused to accuse Haran Roy of the murder. They, the witnesses, (from the position of their houses) must have known who was with deceased, when she met her death, and if they had been suborned to accuse the prisoner, because he refused to accuse a 3rd party, they would have criminated that 3rd party in their depositions; so far from that being the case, Haran Roy is completely exculpated by their evidence. The prisoner in the sessions court pleads an *alibi*, and that the confession of privity to her murder was extorted from him by the police, and repeated before the deputy magistrate under the influence of their threats; he has entirely failed to establish either of these pleas.

The *futwa* of the law officer declares the prisoner guilty on *zun-nighaleb kutl* and liable to *akoobut*.

I so far differ from the *futwa*, that I consider the crime of privity to wilful murder established, and recommend that the prisoner be sentenced to fourteen (14) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The officiating sessions judge has convicted this prisoner of privity to wilful murder. It would appear that the prisoner was first named by Deepchand Gope to Kaleekinkur Chukerbutty, paramour of the deceased, as having been seen leaving her house. Kaleekinkur deposed that Deepchand told him he saw him leave; and on knocking at the door, deceased gave no answer, so he went in and found her murdered; Deepchand then came to him and reported the circumstance, upon which, he with Kaleemohun Buxee and Sooshee Bhoosun Rai went in search of the prisoner but did not find him, they then went to the house of the murdered woman. Deepchand has, however, partially contradicted this statement inasmuch as he declares he did not tell Kaleekinkur that he had seen the prisoner quit the house. Again Kaleekinkur's statement is quite at variance with the first story told by the chowkeedar, Kachai, who reported at the thannah that he was going his rounds, when passing deceased's door he perceived blood issuing below it, and on entering discovered the corpse. It is plain that both stories cannot be true; and the neighbours would necessarily have been disturbed either by Deepchand or Kachai when it was seen what had happened. The chowkeedar afterwards gave another version, that during his rounds he saw a crowd collected at the house in consequence of the discovery made by Deepchand, when he first learned that deceased had been murdered. Being asked to reconcile the discrepancy, he said that he was so overcome with fear at a murder having taken place in his beat, that he did not know what he had stated at the thannah. The officiating sessions judge has not noticed these

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Case of CHUNDER-KANT RAHA.

details in his report, but has credited the evidence that the prisoner was actually seen leaving the house as deposed, and that the bloody clothes and ornaments were found in a way to corroborate the charge against him. The evidence upon these points is, however, too unsatisfactory to found a conviction upon; for the several articles could easily have been placed where discovered; and the doubt thrown upon the evidence by its contradictory nature, leads us to consider it not trustworthy in respect to the flight of the prisoner and finding the clothes and ornaments. There remain the prisoner's alleged confessions before the police and deputy magistrate. He has denied them in the sessions court, and ascribed them to undue influence. There is much to induce us to believe him. It appears that his confession was only made to the police on the 6th March or two days after apprehension. He had all along previously denied his guilt, and ascribed his confession to the police having told him he would escape if he implicated two persons Haran and Esunchunder Rai. These men were at once discharged by the darogah, which proves that the confessions were not reckoned true as regards them, otherwise the inquiry would have been followed up against them; and it might have been readily ascertained if the prisoner was telling a true story regarding himself. He stated that he had taken too much wine to be able to accompany the deceased to the house of Lallchand Seal to deposit her ornaments, and yet he is reported by Deepchand Gope to have been running quickly from her house. His account also is that Haran, without any warning whatever to him and Eshan, attacked the deceased. This is highly improbable. Discrediting the truth of his alleged confessions, we acquit him and direct his release.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*, AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT

versus

MOSAHEB ALLY (No. 29,) LEELA SINGH (No. 30,) JUGGUN (No. 31,) JEETUN (No. 32,) AHMUD HOSSEIN (No. 33,) BHOPUT (No. 34,) BUDEEOODDEEN (No. 35,) POKHUN (No. 36,) JUNGLEE (No. 37,) POONAEE (No. 38,) TILOKE CHUND (No. 39,) DHOTUN (No. 40,) JEETOO (No. 41,) CHOONEE (No. 42,) KISHNA (No. 43,) KURRUM CHUND (No. 44,) CHUNDOO (No. 45,) DAHOO (No. 46,) LOKEE (No. 47,) SHUNKER (No. 48,) GONESHI (No. 49,) HURRUK (No. 50,) CHUMROO (No. 51,) AND GOPAUL (No. 52.)

Patna.

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Case of MOSAHEB ALLY and others.

Orders of the sessions judge confirmed as to prisoners found guilty of affray attended with homicide and sentenced to five years' imprisonment with labour and irons, although Europeans engaged in the affray had been, on conviction in the Supreme Court, sentenced to shorter terms.

CRIME CHARGED.—1st count, affray attended with homicide of Doorga Singh and wounding of Messrs. White and McCullagh, Koorban Ally and Mosaheb Ally; 2nd count, aiding and abetting in an affray, attended with homicide of Doorga Singh, and wounding of Messrs. White and McCullagh, Kurban Ally and Mosaheb Ally.

CRIME ESTABLISHED.—The 2nd count of crime charged.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 15th March, 1856.

Remarks by the sessions judge.—The prisoners pleaded *not guilty*.

There was a quarrel about some *kunker* between Messrs. McCullagh and Baldwin employed by the executive officer on the Gya road, on the one side, and Mr. White employed by the Railway contractors on the other.

On the 15th of January last, McCullagh and Baldwin sent carts to fetch *kunker* from a place called Jynteea; White was encamped at Jynteea and claiming the *kunker*, the others wished to fetch away, for his employers, stopped the carts. On the 16th January, McCullagh and Baldwin went with a large body of men to White's encampment to release the carts. White resisted and an affray took place, all were armed seemingly with swords and *lattees*. White and his servant Doorga Sing were severely wounded and then bound and carried away towards Patna. When they reached a village called Luckna about two *coss* from Jynteea, Baldwin with twenty-four followers was

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stopped and apprehended by Jewlall Singh burkundaz, witness No. 22, who, for this purpose had obtained assistance from a neighbouring zemindar. McCullagh was apprehended the following morning. A number of the people with Baldwin threw down their weapons and escaped, those apprehended were taken on the spot with weapons in their hands in immediate attendance on Baldwin and aiding him in carrying off White and Doorga Singh bound as prisoners. McCullagh and Mosaheb Ally prisoner No. 29, were also severely wounded, Doorga Singh and Koorban Ally with one or two other servants appear to have been White's only attendants.

The evidence of witnesses Nos. 1, 2, 3, 5, 6, 7, 8 and 9, prove the affray. They all saw the advance on White's tents by McCullagh and Baldwin with their party, and describe the general features of the fight, but are unable to identify any of the parties.

Dr. Dicken, witness No. 10, proves the severity of the wounds received by all parties as also that the death of Doorga Singh was caused by injuries received in the affray.

Witnesses Nos. 22, 23, 24, 25 and 28, prove that all the prisoners were apprehended at Luckna while in the act of carrying off White and Doorga Singh bound as prisoners.

Koorban Ally, prisoner No. 28, says he was cooking White's dinner, when McCullagh and Baldwin came to the tents and attacked his master, that he was wounded and ran away. The witnesses he calls for his defence, generally corroborate this story.

The other prisoners in their defence state variously either that they were not there at all, or that they had gone to a certain point on the road short of Jynteea.

Their witnesses prove nothing to the point and altogether fail to exculpate those calling them.

The *futwa* of the law officer convicts prisoners Nos. 29 to 52, inclusive, on the second count, adjudging them liable to discretionary punishment, prisoner No. 28 he acquits, in both of which findings I concur.

I consider the evidence quite conclusive as to prisoners Nos. 29 to 52 inclusive, having been engaged in the affray which took place at Jynteea on the 16th of January last, in which Doorga Singh received the injuries that caused his death, and others were grievously wounded. They, the prisoners, were merely temporary followers of McCullagh and Baldwin, and whatever amount of criminality attaches to the principals who will be tried before another tribunal, can only be convicted of aiding and abetting in an affray accompanied by homicide and severe wounding, as per second count of the charge, on which accordingly I convict them, sentencing each to five years' imprisonment with labor in irons, for though they may have

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been but blindly following their European leaders, and not strictly responsible for the more fatal effects of the affray, they must be taught that even as the instruments of others they are liable to severe punishment for aiding in a breach of the peace where human life was sacrificed to the evil passions of their principals. The crime is much aggravated in my opinion by the brutal treatment received by White and Doorgah Singh after the affray.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin, J. H. Patton and J. S. Torrens.)

Mr. B. J. Colvin.—I see no reason to interfere with this sentence. The prisoners are properly convicted of aiding and abetting in affray, with homicide and wounding, both upon the evidence and their own admissions. The sessions judge has, moreover, given them the minimum punishment which he could award.

Mr. J. S. Torrens.—The sessions judge, apparently, has awarded punishment in this case, considering it the minimum, which under provisions of Section 2, Regulation II. of 1823, he could impose. The above section, as explained by Regulation VI. of 1828, Section 2, is meant to apply to cases where there is distinct premeditation on part of the accused to settle their differences by commission of an affray, but not where such premeditation, as on their part, is not proved, or where there may be mitigating circumstances attending the offence. In this case whatever may have been the premeditation on the part of the European leaders and instigators of the affray, Baldwin and McCullagh, I am not of opinion that it has been brought home to the parties now before us in appeal. They were the servants or labourers in the employ of the above mentioned individuals; and considering that they were led on and induced to commit the acts they did, on the persuasion and example of their employers, there appears strong grounds for mitigation of their sentences; and as the law, which I have quoted, allows of such mitigation, I think, under all the circumstances of the case, it should be extended to them. Had we not the power of mitigating the sentences of these prisoners, I should have considered the case one which it was our duty to bring to the notice of the Government; for whilst these prisoners, the mere instruments in the affray, originated by Baldwin and McCallagh, have been sentenced, under our laws, to five years' imprisonment, the principals who led them into their crime have been awarded before the Supreme Court a very much diminished extent of punishment. The Government, under such circumstances, would perhaps have seen reasons for remitting part of the sentences of these prisoners to prevent so palpable an injustice. As I conceive, however, that the law places the power of mitigation of sentence in our own hands, I would reduce the sentence of the prisoners, under all the circum-

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stances which I have noticed, to two years with 100 Rs. fine, in lieu of labor, to be paid within fifteen days.

Mr. J. H. Patton.—The dispute between the parties commenced on the 15th of January, when the retainers on one side refused to permit the adherents of the other to take away limestone, and forcibly detained the carts sent for the purpose of bringing it. Here was an overt act of resistance accompanied with force done by one party. To revenge themselves of the aggressive act and enforce the attainment of their object thus frustrated, the opposite party on the following day, several hours subsequently and after time for mature deliberation, collected together an armed body under the leadership of two Europeans and sallied forth against their adversaries, determined to settle their differences by an appeal to arms in the field of combat. They met, a conflict ensued, and death and wounds were the result. If ever an affair were characterised by the signal marks of premeditation and purpose prepense, it is this. It is in direct evidence that the prisoners took part in this tumultuous breach of the peace and were actively engaged in the conflict. As the law makes no difference in estimating the degree of criminality between leaders and followers under such circumstances, and holds both guilty in the same measure, it is not for us to do so. It is altogether unquestionable that the acts of Baldwin and McCallagh were premeditated. The deeds of those who acted under their orders, must be assumed to be equally premeditated; for the same proof establishes the guilt of both.

It is contended that because the European leaders have been sentenced to a very much diminished extent of punishment, viz. twelve and six months' imprisonment, the prisoners are entitled to a mitigation of their sentence; I cannot concur in this view. The former were tried by the law of England under which pains and penalties are regulated by a totally different standard from ours; and the infliction of long terms of imprisonment in a jail, studiously avoided. Their sentence probably was the severest the statute law of England prescribes in such cases. The latter, on the other hand, have been sentenced, under the Regulation law, to the minimum punishment, to which they were obnoxious for the crime of which they have been found guilty. Besides, taking all things into consideration, I am not prepared to say that there is much, if any, inequality in the severity of the two respective sentences, particularly when it is borne in mind that in respect to the Europeans it involves, in addition to the imprisonment (a hundred fold more galling and irksome than to the native) the infallible loss of character and employment, and probable ruin to all future prospects in life either in this or any other country. Entertaining these views, I would not interfere with the sentence passed upon the prisoners.

PRESENT:

J. H. PATTON, ESQ., *Judge*,

AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT

versus

BHADOO MANJEE (No. 3,) SUMBHA MANJEE (No. 4,) SOBHA MANJEE (No. 5,) AND LALOO MANJEE (No. 6.)

Bhaugulpore.

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Case of BHADOO MANJEE & others.

Orders of the sessions court sentencing a prisoner to four years' imprisonment with fine, for being concerned in the Sonthal rebellion confirmed. Three prisoners similarly convicted by the sessions court released, as the evidence against them was held to be insufficient.

CRIME CHARGED.—1st count, No. 3, attempt to commit rebellion against the State by assembling armed Sontals and in declaring himself a *Soobah;* 2nd count, Nos. 4 to 6, aiding and joining Bhadoo Manjee, No. 3, and other armed Sontals with intent to commit rebellion against the State.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Lord H. U. Browne, officiating magistrate Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 29th April, 1856.

Remarks by the officiating sessions judge.—This case was conducted at Monghyr by the aid of a jury,* on the 29th of April.

* Sheikh Yar Alli. Jungy Lall. Shunkiedial.

The prisoners, Sontals, plead *not guilty*.

The circumstances of this case are connected with the Sontal insurrection and in the month of *Mag*, on Friday, Kokil Pasban of mouza Sandah, reported to witness No. 1, (who is the farmer of that village) and at the Kurruckpore *phandee*, that armed Sontals had assembled in force, and had created one of their number a *Soobah* and erected their huts near the village. The following day, Saturday, witness No. 1, sent two persons, Sheikh Bhuttor, witness No. 5, and Gounder Dhanook, to ascertain the real state of affairs, but as they delayed to return, witnesses Nos. 1 and 2, went to mouzah Sandah. On their arriving about three *russees* from the huts, three men approached them empty handed, one named Bullee Manjee, who told them that it was their *Soobah's* order that they must take off their turbans and shoes, they declined to obey this injunction, especially on their own farm, they then went near the huts, when prisoner No. 3, Bhadoo, a Sontal, who has a sub lease of mouzah Sandah, ordered them to take off their turban and shoes, as he was the *soobah*, the whole country had come into his possession, and if they disobeyed his order they would be murdered. On hearing this threat they through fear obeyed the mandate, prisoner was seated with two *phursas* placed before him, and about ten or twelve armed Sontals around him. Amongst them were

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prisoners Nos. 4, 5 and 6, as his especial attendants, while two hundred Sontals were armed and assembled about two *beegahs* off. No. 3 prisoner again asked them why they had come, as they had no authority in the estate, the Company's *raj* was subverted and the whole country was under their subjugation, directing them immediately to leave, otherwise they would be murdered. They quickly retired and went to the Kurruckpore thannah, and reported the circumstances to the jemadar; the darogah was absent at Sungrampore, intimation was sent to him, and on his arrival he directed witness No. 1, to take ten men of Raja Bidyanund Singh and others, and apprehend the insurgents, they proceeded to Sumdah and found that the Sontals had left their huts and dispersed, witness No. 1, apprehended prisoner No. 3, in his house, and sent him to the police. The following morning, the darogah sent for witness No. 1, to ascertain from him the facts of the case; on hearing them the darogah took about sixty men, proceeded to the village, the Sontals perceiving a force approaching commenced to take refuge in the jungles, the party apprehended fourteen of the fugitives, and demanded their arms, which were concealed in No. 3's house, they were secured and produced in court. It was evident that No. 3, was the *Soobah*, for when witness No. 1, first saw him and the Sontals assembled in their huts, he had offered up some kids to the deity and was shaking his head, as is customary when they become infatuated. This statement, as relates to the first part of it, is corroborated by witness No. 5, who was deputed by witness No. 1, to ascertain the correctness of the Pasban's report, he was treated by them in the same disrespectful manner. When witnesses Nos. 1 and 2, were returning home they met several Sontals with their women, taking earthen cooking utensils, &c., towards the village, they enquired of them for whom they were intended, they replied that Sheo Suhoy Soobah of Mungrar was coming to join prisoner No. 3, and the supplies were being collected for his force. No enmity existed between witness No. 1 and the prisoners which could induce him to implicate them, they were identified as the ringleaders in this attempt to commit insurrection against the State, were seen assembling an armed force for illegal purposes and only dispersed when the troops arrived at Sungrampore, which is distance of seven *coss* from the village, and, had not immediate and energetic measures been taken to thwart their intention, it is probable they would have committed similar depredations to those which have already occurred and are too well authenticated to require further comment.

Prisoner No. 3, denied the charge before the magistrate, on the 2nd February stating, although witness No. 1, declares him to be a *Soobah* he is not one, and adds the following absurd defence. The *deotah*, he averred, certainly had inspired him,

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and taking one of the *phursas* produced in court said, "That weapon was in my hand," he made a "*Jopree*," or hut to reside in, no one else was with him when he found a pair of iron "*serotah*," or pinchers near his Kullian, and from that period he cannot state what occurred.

In his defence before this court, he acknowledges having erected the hut near a Kullian, but denies assembling the Sontals; he is the pottal lar of the village, the ticcadar witness No. 1, required two *beegahs* of land to cultivate, which he refused him, on this he directed him to pay either 25 Rs. or deposit grain to that amount, otherwise he would repent it, he found a pair of iron "*serotahs*;" or pinchers in his field, his brain became affected and cannot imagine what happened.

The other prisoners merely plead *not guilty*, making similar frivolous excuses, and none of them have witnesses to depose on their behalf.

The jury find a verdict of guilty against the prisoners in which I concur, and sentence accordingly. Of the fourteen apprehended and brought to trial, ten were acquitted by the magistrate for want of sufficient proof and identification.

Sentence passed by the lower court.—No. 3, to be imprisoned without irons, for four years, and to pay a fine of 50 Rs. on or before the 13th May, 1856, or in default of payment to labor until the fine be paid, or term of sentence expire. Nos. 4, 5 and 6, each to be imprisoned without irons for three years and to pay a fine of 25 Rs. on or before the 13th May, 1856, or in default of payment to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) We are of opinion that the conviction of the prisoner, No. 3, is good. The evidence of the witnesses shows directly that on proceeding near the encampment of the insurrectionists, he was seen presiding as *Soobah*, or chief of the armed assembly. His own defence also in some measure, corroborates this evidence, as he admits having been under the inspiration of the deity (as the Sontals were in the habit of supposing those to be who acted as their *Soobahs*) and was in consequence carrying arms, though denying any assumption of authority over the rest of the body. We therefore see no reason to interfere with the sentence passed upon him.

The evidence of the witnesses as to the identification of the other prisoners, we do not consider by any means satisfactory or trustworthy. They did not depose to having recognised these prisoners from the first as they did with regard to prisoner, No. 3; and it was not until leading questions were put to them on the trial, that they stated having seen them at the encampment along with him. They were not arrested by the same party or at the same time, and not until they were taken with

several others who have been released, and after the collected body had dispersed and betaken themselves in flight to their homes. Seeing therefore that the evidence is not clear as to their having formed part of that body, or been actually engaged with the other prisoners in any insurrectionary act, we acquit them of the charge and direct their release.

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Case of BHADOOMANJEE & others.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT

versus

MUSST. SADUBANEE (No. 3, NON-APPELLANT,) LOKENATH SHA (No. 4,) AND GOPEENATH SHA (No. 5.)

Cuttack.

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Case of LOKENATH SHA and others.

Prisoners found guilty of perjury in having deliberately sworn to a false accusation against a party arraigned before the magistrate, sentenced by the sessions judge to three years' imprisonment with labor and irons. Orders confirmed on appeal.

CRIME CHARGED.—No. 3, perjury, in having, on the 16th January, 1856, corresponding with the 5th Magh, 1262, Umlee, Wednesday, deposed on a solemn declaration taken instead of an oath before the officiating magistrate of Balasore, that "on the 7th Poos at two *gurree* of the night, whilst she was going to the house of Chytun Jenna for a little butter, a distance of two arrow shot from her house, witness No. 2, Chuprassy of salt chowkee, mouza Russalpore, inhabitant of Sujaon, asked to cohabit with her, and on her refusal, Sreehurree Singh seized both her hands." Such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

No. 4, perjury, in having on the 23rd January, 1856, corresponding with the 12th Magh, 1262, Wednesday, deposed on a solemn declaration taken instead of an oath before Baboo Sreenath Ghose, deputy magistrate of Balasore, that "on the night of the 7th Poos last, close to Jutteealebaug, a cry was heard, that we both repaired to the place of the cry and saw in the ditch of Kenkragurreah plaintiff (that is prisoner, No. 3,) lying down on her back underneath and Sreehurree Singh (witness No. 2,) on her; on seeing this, we bawled out, saying, Who is that? on which Sreehurree Sing replied, Let it be who it may, what is that to you? Saying this, he left the above plaintiff (that is the above prisoner) and stood up and went away;" such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

No. 5, perjury, in having on the 23rd January, 1856, corresponding with the 12th Magh, 1262, Wednesday, deposed on a solemn declaration taken instead of an oath before Baboo Sreenath Ghose, deputy magistrate of Balasore, that on the night

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of the 7th Poos last, saw at Juteealebaug, near the village in the ditch of Kenkragurreah plaintiff (that is prisoner No. 3,) lying underneath and Sreehurree Singh (that is witness No. 2,) seated on her; such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.- -Mr. V. H. Schalch, officiating magistrate of Balasore.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 28th May, 1856.

Remarks by the sessions judge.—The jury brought a verdict of guilty against all the prisoners. I consider that Musst. Sadubanee made the false charge against the salt chuprassy for having searched for smuggled salt, several ryots of her zemindar Radhagobind. One ryot is proved to have threatened the chuprassy. The woman confesses to be thirty-nine years old and she looks older. The whole case is unlikely. She did not complain until the 16th January, though the attempted rape occurred on the 20th December, nor did she give notice at the thannah. But the chuprassy is proved to have been at Poddompore, on the 19th at night, and early on the 20th December, he went to Balasore and reported himself on that day to the nazir of the salt department, who at 2 P. M. wrote a certificate of the arrival of the prisoner; after that, the prisoner was still left under the charge of the chuprassy and Kuchil, so that he would have had to have walked back in five hours eight miles, after walking four for the hope of finding the woman out of her house; besides Kuchil Burkundaz says he was all the night of the 20th at Balasore on guard with him.

I therefore agree with the jury that all the prisoners are guilty of the charge, and I sentence defendants, Nos. 3, 4 and 5, to imprisonment for three years each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) It appears from the evidence taken before the magistrate and sessions court, that at the time the prisoners swore to having seen Sreehurry Chuprassy in the act of making the alleged assault on the person of Musst. Sadubanee, he was employed in the cutcherry of the salt agent at a distance of two *coss* from the spot and continued there in charge of certain prisoners during the night. Accepting the above evidence as true, and we see no reason to doubt it, the statements of the prisoners made on oath must be considered as wilful and deliberate perjury, made designedly for the purpose of establishing a false and malicious charge, under trial before the magistrate. Under these circumstances, we reject the appeal of the prisoners, and confirm the sentence passed on them by the sessions judge.

PRESENT:

J. H. PATTON, Esq., *Judge* AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

TRIAL NO. 1.

HOSSEIN MUNDUL (No. 1,)

TRIAL NO. 2,

HAROO MUNDUL (No. 2,)

TRIAL NO. 3,

KHAJOO PERRAMANICK (No. 3.)

Rajshahye.

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Case of HOSSEIN MUNDUL and others.

Orders of the sessions court, convicting prisoners of perjury and sentencing them to three years' imprisonment, confirmed.

Trial No. 1.—CRIME CHARGED.—No. 1, perjury, in having on the 2nd January, 1856, corresponding with 19th Poos, 1262, B. S., intentionally and deliberately deposed under a solemn declaration taken instead of an oath before A. J. Jackson, Esquire, officiating magistrate of Rajshahye, that Ramnarain Sircar poked his nephew, Ainullah, on the left side of the stomach with a stick shod with iron, and that Ainullah putting his hands to his stomach fell down. On seeing this, witness went and lifted Ainullah and took him home; and in having on the 22nd February, 1856, corresponding with 11th Falgoon, 1262, B. S. before the officiating sessions judge, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath that hearing his nephew cry out he went to the place where he was some two or two half *russees* off; that Ainullah was pressing his hand on his stomach and on deponent's questioning him said that Ramnarain has struck him on the stomach; these statements being directly at variance with each other on a point material to the issue of the case.

Trial No. 2.—No. 2 perjury, in having on the 2nd of January, 1856, corresponding with 19th Poos, 1262, B. S., intentionally and deliberately deposed under a solemn declaration taken instead of an oath before A. J. Jackson, Esquire, officiating magistrate of Rajshahye, that while at work on the 13th Poos, he saw Ramnarain Sirkar poke Ainullah Chokrah on the left side of the stomach, upon which he fell down crying, Uncle. Upon this, his uncle came and took him home. He died at night. Deponent saw this from a distance of about two *russees*; and in having on the 22nd February, 1856, corresponding with 11th Falgoon, 1262, B. S., stated before the officiating sessions judge that he did not see Ramnarain strike deceased, but heard of the case from Hossein Mundul; these two statements being directly

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at variance with each other on a point material to the issue of the case.

Trial No. 3.—No. 3, perjury, in having on the 2nd January, 1856, corresponding with 19th Poos, 1262, B. S., intentionally and deliberately deposed under a solemn declaration taken instead of an oath before A. J. Jackson, Esquire, officiating magistrate of Rajshahye, that on the 13th Poos, while at work in a field, he saw Ramnarain Sirkar strike Ainullah Chokrah on the left side of the belly with a stick. The boy fell down and his uncle took him away; saw it from a distance of two *russees;* and in having on the 22nd February, corresponding with 11th Falgoon, 1262, B. S., stated before the officiating sessions judge, that he did not see the occurrence, but that hearing Hossein Mundul call out, he went to him and found the boy wounded, saw no one beat him; these statements being directly at variance with each other on a point material to the issue of the case.

Trials Nos. 1, 2 *and* 3.—CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. A. J. Jackson, officiating magistrate of Rajshahye.

Tried before Mr. Lowis Jackson, officiating sessions judge of Rajshahye, on the 9th May, 1856.

Remarks by the officiating sessions judge.—Trials Nos. 1, 2 *and* 3.—The prisoners at the bar were respectively prosecutor and witnesses in a case tried before this court in February last, when they deposed respectively according to the tenor of the charges on which they are now arraigned; the general purport in each case being that in the case of Hossein Mundul, No. 1, he had found his nephew lying on the ground wounded, and had been told by him that certain persons named had inflicted the injury described (of which the boy died), and as to the others that they had heard the facts from Hossein Mundul.

They had all positively deposed before the magistrate that they had with their own eyes seen the accused person wound the boy, and had said circumstantially that they witnessed the occurrence from a distance of about two *russees.* On being questioned as to this they denied it. The accused was of course acquitted, and the prosecutor and witnesses were made over to the magistrate, with orders that if he was of opinion that the contradictory statements had been deliberately and knowingly made, he should commit them for that on the charge of perjury.

He has accordingly done so, the prisoners plead guilty; the fouzdarry depositions and the record of this court have been put in and proved by officers of the two courts respectively. The prisoners urge in extenuation that manslaughter was really committed as alleged; that they testified to what they knew; that they are ignorant persons, not recollecting words very precisely, and that one or two *trifling discrepancies* cannot be assigned as wilful perjury.

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Case of HOSSEIN MUNDUL. and others.

The law officer convicts them of wilful perjury and declares them punishable by *Tazeer*. In this conviction, I concur. The point upon which the contradictory statements were made, far from being a trivial discrepancy, was one of highest importance; for the same statement repeated would probably have brought about the conviction of the person charged with homicide.

The most lenient construction of the act charged is, that they were satisfied that the accused had actually inflicted the mortal injury of the boy, and stretched a point in their fouzdarry deposition to ensure his conviction. Under the circumstances, I cannot do less than pass the minimum sentence under the law, viz. three years' imprisonment with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) Seeing no reason to interfere with the conviction and sentence, we reject the prisoners' appeal.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

BUSTUM JENNAH AND GOVERNMENT

versus

ANEROODE MAHEELY (No. 1,) NURSING JENNAH (No. 2,) AND KOMDROO JENNAH (No. 3.)

Cuttack.

1856.

August 18.

Case of ANEROODE MAHEELY and others.

One prisoner sentenced to fourteen years' imprisonment with labor and irons, on a charge of culpable homicide. Two other prisoners to seven years each.

CRIME CHARGED.—Wilful murder of Aneroode Jennah, deceased, son of prosecutor, on the 4th February, 1856.

Committing Officer.—Mr. W. Brown, deputy magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 22nd May, 1856.

Remarks by the sessions judge.—The particulars of this case are as follows. Defendants Nos 2 and 3 are slaves of Bidenath Roy, zemindar, purchased, as is the custom, in thannahs Doudpore and Budruck. Defendant No. 1, is a peon of the moonsiff of Dhumnagur, but is in the interest of Bidenath Roy.

An ox belonging to this zemindar went to the pea-stack of the deceased Aneroode Jennah, whose servant gave abuse and drove it away. It came again and Kundroo Prodan No. 3, quarrelled with the servant of deceased. Deceased tried to pacify him. In a quarter of an hour the three defendants came to the house of Aneroode Jennah; Nos. 2 and 3 entered it, beat, and dragged out while beating the deceased with their fists, when defendant No. 1, struck him with his fist on the chest and then with a male bamboo weighing twelve and a half *chittacks*,

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struck the back of his neck, which blow killed him instantly, having broken the first joint of the spine, as the native doctor says.

Defendant, No. 1, confessed before the police and before the deputy magistrate, but on being further questioned denied his guilt. He confessed before the police, as did defendants Nos. 2 and 3. Before the deputy magistrate these last confess to bringing the deceased out of his house, when he was killed by defendant No. 1, but deny that they struck him. Defendant confessed that he used a bamboo No. 2, weighing four and a half *chittacks*, which he produced; but he was seized with the heavy bamboo No. 1, and this is sworn to have been the weapon.

The deceased tried to prevent the quarrel, and did not even resist. The defendant, a very strong man, deliberately taking such a weapon and striking deceased with it, is considered guilty of murder by the law officer. I do not think that when defendant went to the spot he intended to kill him outright, for the quarrel was not so very serious, and I find him guilty of culpable homicide and beg leave to forward the case to the Sudder Court recommending that defendant No. 1, Aneroode Mohunt, be imprisoned with labor in irons for twenty years, and Nursing Jennah No. 2, and Kundroo Prodan No. 3, for seven years with labor in irons as accomplices.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We consider that the sessions judge has correctly estimated the prisoner's guilt in this case. There is no doubt that the deceased was first ill-used by prisoners, Nos. 2 and 3, and was afterwards fatally assaulted by prisoner, No. 1, but it is manifest that there was no intention on his part to take deceased's life, although the attack upon him was quite unjustifiable on the part of all three. We think that under the circumstances, it will be sufficient to sentence prisoner No. 1, to fourteen years' imprisonment, and Nos. 2 and 3, to seven years' imprisonment with labor and irons.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND
J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND OTHERS

versus

TOOLSHEE AHEER (No. 1,) AND ROOCHA AHEER (No. 2.)

Shahabad.

1856.

August 18.

Case of TOOLSHEE AHEER and another.

Prisoner convicted of a riotous attack on a house sentenced to two years' imprisonment and fine.

CRIME CHARGED.—1st count, with forcibly entering a dwelling house and taking therefrom property to the amount of Rs. 361-11, or thereabouts; 2nd count, whilst acting illegally as above with wounding Behary and Buhorun.

Committing Officer.—Mr. F. B. Drummond, magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 10th June, 1856.

Remarks by the officiating sessions judge.—The prisoner is charged with being one of a body of about one hundred persons, who, on the night of the 30th of March, attacked the Bungalow of Mr. Campe, the assistant in charge of the Dunwar factory belonging to Mr. Solano, carried off property amounting to Rs. 361-11 or thereabouts, and wounded Behary Doosadh and Buhorun Aheer; information of this occurrence was given at the thannah on the following morning. The case is supported by the depositions of the wounded men, as well as Ograhlal and Ramjeeawun Pandey, the other prosecutors, and by the evidence of the five eye-witnesses and that of Mr. Campe. The prisoner is named by the four prosecutors and the five eye-witnesses all of whom depose to his being concerned in the attack, and he is mentioned by six of the above in their statements before the police; he denies the charge and brings a counter one about his cattle and brother having been taken away by Ramjeewun Pandey, Shewburt Rai, Shewburt Pandey, Gopal Pandey, (one of the prosecutors and three of the eye-witnesses in this case,) and others, in consequence of his refusal to cultivate indigo for the factory. This defence is supported by two witnesses who say that this happened in the latter half of the month of Chait, whereas in his statement, which he made at the thannah on the morning after the attack on the bungalow, he makes out that it was about the 6th of Chait. The law officer acquits both prisoners, distrusting the truth of the case altogether. In this view of the matter, I do not agree with him No time was lost in giving information at the thannah, and to Mr. Campe who was at another factory. There appears to be ample reason for the bad feeling on the part of the ryots against the owner or

1856.

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Case of TOOLSHEE AHEER and another.

person in charge of the factory in consequence of suits having been instituted against them, for arrears of rent, and it is difficult to understand what benefit could be gained by the getting up this accusation against them if entirely without foundation. The evidence of Mr. Campe shews that the box containing Rs. 359-4, and other property is missing. Behary and Buhorun appear, from the medical report, to have received contusions, and although the evidence f the eye-witnesses as to the exact way in which each of them was wounded is so far open to suspicion, yet I see no reason to doubt the whole of it; the only witnesses to the attack would naturally be the servants living in the factory, and though the night was dark, yet there appears to have been a light in the verandah of the bungalow and the witnesses were at a very short distance from what was going on, consequently the recognition of persons well known to the factory people was very possible. As the prisoner Roocha Aheer was only named by three persons before the police, I have acquitted him, but considering the evidence sufficient for the conviction of the prisoner Toolshee Aheer as being concerned in a riotous attack made at night by a large body of men on a bungalow, during which property was plundered and Behary and Buhorun wounded, I recommend his being sentenced to imprisonment for two years and to pay a fine of 50 Rs. in the space of one month or to labor until such fine be paid.

The magistrate having in his grounds of commitment stated, "if the evidence is true there is ample to convict the prisoners." I have called his attention to the Court's letter No. 1077,* dated the 21st December, 1855, to the address of my predecessor requesting him to be guided by the directions contained therein in making any future commitments.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We concur with the officiating sessions judge in convicting the prisoner. He has been sworn to by several witnesses as stated in the letter of reference. His defence is not trustworthy; for witnesses are brought to prove it, although previously at the thannah he had allowed that the charge of taking his cattle was a false one. We sentence the prisoner as proposed.

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* From the Register of the Nizamut Adawlut to the sessions judge of Shahabad, dated 21st December, 1855. No 1077.

The Court, having had before them your letter No. 175, dated the 14th instant, with its enclosure, direct me to request that you will point out to the magistrate that he has nothing to do with the practice of English magistrates, but that he is to be guided in making commitments by the law laid down in Regulation VIII. of 1850, and in the Court's Circular Order No. 9, of the 11th July last.

2. The Court observe that the English judgment to which the magistrate refers is very imperfectly drawn out, and does not give any details of the evidence from which an opinion might be formed.

B. J. COLVIN, Esq., *Judge*, and J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT

versus

HARRO GHURRAH (No. 7,) and NUND KOMAR (No. 8.)

Midnapore.

1856.

August 18.

Case of HARRO GHURRAH and another.

Prisoners convicted of belonging to a gang of dacoits sentenced to banishment for life.

Crime Charged.—1st count dacoity in the house of Neeteeanund Khodal of thannah Puddumbussan; 2nd count, dacoity in the house of Bindabun Shee, nephew of Bissumber Shee, of thannah Pertabpore; 3rd count, No. 8, dacoity in the house of Gungadhur Denda and others, of thannah Pertabpore, No. 7, dacoity in the house of Ruggoo Mundle, of thannah Pertabpore. 4th count, being professional dacoits and having belonged to the gang of dacoits under Sirdars Soonder Kamar, (convict,) Prosad Kharah and Mocheeram Kharah (approvers.)

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 2nd June, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty* to the charges preferred against them. The prisoner No. 7, Harro Ghurrah, citing witnesses to prove he gains his livelihood by cultivating the soil, and that the wound on his nose was caused by his falling down the "*ghat*" of a tank. The prisoner No. 8, Nundkamar, alleges that approver, witness No. 2, Mocheeram Kharah, bears enmity against him for having cast off his daughter with whom he once cohabited.

The four approver witnesses speak to the identity of the prisoners, of which there is no doubt. They denounce the prisoners as having gone forth with gangs and committed the respective dacoities charged against them, and in corroboration of their testimony, the records of the four cases* charged have been laid before the court.

In the first case, No. 340, or that which occurred in Nitianund Khodal's house. One Greedhur Doss was apprehended in another case which occurred in thannah Pertabpore, and in his confession dated 16th March, 1848, said he had been engaged in the dacoity in Nitianund's house, which occurred on the 4th idem, and named Soondur Kamar, Mocheeram Khara, witness No. 2, and Pershad Khara No. 3. These three were arrested, but released by the police.

In the second case, No. 372, the dacoity in Bindabun Shee's

* Nuthee No. 340, dacoity in the house of Nitianund Khodal.
Nuthee No. 372, dacoity in the house of Bindabun Shee.
Nuthee No. 406, dacoity in the house of Gungadhur Dendah.
Nuthee No 27, dacoity in the house of Ruggoo Mundul.

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Case of HARRO GHURRAH and another.

house, in which his nephew, Bishumbher, appeared as prosecutor. The record shews that prisoner No. 8, Nund Kamar, was arrested on the suspicion of the prosecutor and confessed before the police darogah on 29th July, 1849, and named Harro Ghurrah prisoner No. 7, and Koochul Jennah, witness No. 4 of this case, as accomplices. These two last mentioned men were not sent in by the police. Another prisoner in that case, by name Chidam Jennah, also named in his confession, dated 29th July, 1849, prisoners Nos. 7 and 8. Soonder Kamar, another prisoner in this case, in his confession of 1st August, 1849, also implicated those two prisoners as having accompanied the gang, which committed the dacoity. Again No. 7, prisoner Hurro Ghurrah was further named in the confession of Tara Mudhoo Sawant, Goluck Mytee and Anundee Sance, dated 1st August, 1849, and 3rd August, 1849, respectively, before the police.

In the 3rd case, No. 406, the dacoity in the house of Gungadhur Dendah. The record shews that his brother was Doorjan Dendah, called by the approvers witnesses, Urjun, the village, however, is the same, viz. Boojpore, so that this is the dacoity no doubt, to which the witnesses allude. The approver witnesses, Mocheeram Khara, No. 2, and Pershad Khara, No. 3, were arrested on the suspicion of the said Gungadhur Dendah. They, at the time, denied the charge and were released, but now denounce the prisoner No. 8, Nundo Kamar, as having accompanied them and committed this dacoity.

In the 4th case, No. 27, the dacoity in Ruggoo Mundul's house on 5th July, 1853. It appears that Harro Ghurrah, prisoner No. 7, was absent from his village on the night of that occurrence; that the chowkeedar, disbelieving that the wound on his nose was accidental, reported the occurrence; on this, he was arrested. The appearance of the wound was reported by the darogah to have been such as would have been caused by some sharp weapon. The medical man, sub-assistant Surgeon, Ramchunder Sen, reported that "the wounds situated on the bridge of the nose as well as on the cheeks and nape of the neck appear to have been inflicted both by *lattees* and sharp-edged instruments." The witnesses of his defence (one of whom is Ruggoo Sawant, witness No. 11 of this case) stated at that time that they knew nothing in his exculpation. The prosecutor's son, Soonder Mundul, in his deposition before the darogah dated 6th July, 1853, stated he had attacked the dacoits with a sword and stick and had struck them, he confirmed this before the deputy magistrate.

The prisoner Harro Ghurrah No. 7, was moreover named by seven prisoners, who were arrested in that case, and confessed before the police, as an accomplice in this dacoity, one of them, Munsaram Doss, confirmed his confession before the deputy magistrate on the 9th July, 1853.

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Case of HARRO GHURRAH and another.

The witnesses of the defence say nothing calculated to exculpate these prisoners, but the very reverse, denouncing them as bad characters without any reservation. I therefore, on the evidence, corroborated as it is by the records of the different cases, consider that the crime of having belonged to a gang of dacoits is proved against them, and I would recommend their being transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The approvers' evidence is corroborated by the statements put on record at the time of several dacoities, particularly that in the house of Bindabun Shee, in 1849, in which dacoity prisoner No. 8, was arrested and confessed before the police, mentioning in that confession prisoner No. 7, and the witnesses Nos. 4 and 5. What the approver witnesses now depose to, as to the share the prisoners took in the dacoities referred to, we have, under the corroboration above noticed, no reasons for distrusting, and we therefore sentence them as recommended by the sessions judge.

PRESENT:

B. J. COLVIN, ESQ. *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND LOKENATH PANDAH *versus* GOBIND MISSER.

Cuttack.

1856.

August 18.

Case of GOBIND MISSER.

Prisoner convicted of robbery with intent to murder, sentenced to transportation in labor for life.

CRIME CHARGED.—1st count, attempt to murder Siboo Pandah, 12 years old, with a view to obtain his ornaments; 2nd count, maliciously and dangerously wounding the above Siboo Pandah; 3rd count, stealing from the person of the said Siboo Pandah ornaments valued Rs. 22-14-6; 4th count, receiving the above property, knowing the same to have been stolen on the 29th November, 1855.

Committing Officer.—Mr. W. Brown, deputy magistrate of Bhuddruck.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 20th May, 1856.

Remarks by the sessions judge.—The particulars of the case are as follows:

Siboo Pandah, a boy of twelve years, on the 29th November, went to school at Manoo Mullick's house. In the evening, as he did not return, his father searched for him and on the road from the school to his house, he called so and was faintly answered by his son, Siboo, from a jungle about fifteen yards

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Case of GOBIND MISSER.

from the road; the boy was lying with a cloth round his neck nearly senseless with five wounds in his throat and others on his chest, his temple and ears. His ornaments of silver and gold worth 21 Rupees were missing. He said that Gobind Misser, defendant, had wounded him with his own iron pen and robbed him of his ornaments. The iron pen is not found, but such pens are of iron seven or eight inches long and pointed for writing on tal leaves: a burkundaz apprehended defendant on the 30th November, on the 1st of December he confessed to the darogah, on the 2nd before the deputy magistrate of Bhuddruck he confessed that he had robbed and tried to murder the boy as he was pressed to repay a loan.

Defendant was seen at the school house on that date and confessed that he was there.

He pointed out the place where the ornaments were buried near his sister's house and only the earrings and a ring are missing.

The Moulvee finds Gobind Misser guilty of severely wounding Siboo Pandah with a pointed iron pen in an attempt to kill him and to rob him of his ornaments. I also find him guilty. The crime was premeditated at the school. The weapon was capable of producing death and his intention was to commit murder, and I therefore, in forwarding the case to the Sudder Court, must recommend that the prisoner be sentenced to transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The prisoner confessed first that he had robbed the boy and attempted his life. In the sessions court, he only admitted the fact of robbery, saying that the wounds were inflicted by the boy falling on the stumps of *arhur* bushes and by the iron pen running into him accidentally. There is no doubt of the prisoner's guilt. We convict him of robbery with attempt at murder, and sentence him, according to Clause 4, Section 8, Regulation XVII. 1817, to transportation for life with labor and irons.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND J. S. TORRENS, Esq. *Officiating Judge.*

GOVERNMENT AND MOLAYAM

versus

SALIMUDDEEN (No. 1,) JOYNUDDEEN (No. 2.)

Tipperah.

1856.

August 19.

Case of SALIMUDDEEN and another.

Two prisoners charged with having, together with a third party, not arrested, committed rape on prosecutrix, each party twice, acquitted, owing to the discordant statements of prosecutrix, and the irreconcilable nature of the evidence.

CRIME CHARGED.—Committing rape on the person of Musst. Asab Banoo, the prosecutor's wife.

Committing Officer.—Mr F. B. Simson, officiating magistrate of Noacolly.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah, on the 21st May, 1856.

Remarks by the officiating sessions judge.—The prisoners are charged with committing rape on the person of Musst. Asab Banoo, the prosecutor's wife.

It appears from the evidence of Musst. Asab Banoo* that on the night of the 28th March, she was sleeping with her two step-sons and a daughter in her house, her husband being absent in another village. She was awakened by the crying of one of her sons, over whom some one, who had entered the house by cutting the fastening of the door, stumbled, and getting up was seized by three men, who stopped her mouth to stifle her cries, was dragged or carried her out to a patch of grass jungle at some distance where the three successively ravished her, as she declared before the darogah and before this court, each party twice; before the deputy magistrate she stated the succession in which they had effected their purpose, but made no mention of either of them having a second time attempted to enjoy her. It is to be regretted that she was not asked to explain the apparent discrepancy on this point, between the thannah statement and that made before the deputy magistrate. It is very possible it might have been satisfactorily explained. With this exception her statements throughout have been consistent in all material respects; what she stated before the darogah and this court, she stated at the time to the parties who came up and rescued her from the hands of her ravishers; statements made in cases of this nature immediately after the occurrence are admitted as evidence, and her deposition was given in a perfectly natural manner, so that I can see no reason why it should not be received as true.

Her step-sons,† whose age appears to have been overstated in the calendar and who profess to be unable to comprehend the nature of an oath, were examined in accordance with Act II. 1855,

* Witness No. 1, Musst. Asab Banoo.

† Witnesses.
No. 10, Apta Allee.
,, 11, Asgar Allee.

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and state that three men entered the house and carried her off by force. The eldest followed a short distance, but being threatened by the ravishers, returned and called for assistance. Witness No. 2,* Dhon Gazee first came and rousing other of the villagers, started with them in pursuit, going in an easterly direction they heard, as they approached a dry Bheel in which grass was growing to the height of six or eight feet, some suppressed cries, and, on going further, first one man and then two others came out of the jungle and ran off.

* No. 2, Dhon Gazee.

Rasimuddeen and Hossein Allee Meejee, Nos. 3 and 6,† followed up one of them and captured him, he turned out to be prisoner No. 1, Soleemuddeen; Noseruddeen and Mon Gazee Nos. 4 and 5, followed up the second who turned out to be prisoner No. 2, Joynuddeen.

† Witnesses
No. 3, Rasimuddeen.
,, 6, Hossein Allee Meejee.
,, 4, Noseruddeen.
,, 5, Mon Gazee.

Dhon Gazee No. 2,‡ entered the jungle and found Asab Banoo there naked and crying. On the return of the others with the prisoners, Mon Gazee gave Dhon Gazee his cloth to give to her (her own had fallen as the prisoners were dragging her out of the house) which she putting on accompanied them to the village. The defendants were taken to the Talookdar's chutcherry, but are represented to have made no statement good or bad and requested only to be released.

‡ Witness No. 2, Dhon Gazee.

The only other evidence tending to implicate the prisoners is that of Suffur Allee§ No. 9, a boy 9 years of age, who was also examined under the provisions of Act II. 1855, and who was deputed by Soleemuddeen prisoner No. 1, to enquire who were in the prosecutor's house.

§ Witness No. 9, Suffer Allee.

The prisoners plead *not guilty*, assert a quarrel regarding some land which prisoner No. 1, rents in the vicinity of the prosecutor's house, and aver that they were seized in their own houses on the night in question and this false charge trumped up against them. They had one witness only examined in their defence and declined to call the others. Prosecutor asserted that the second prisoner he has never either seen or heard of before, it does not appear that the villagers have any quarrel with him. That there is any quarrel between prosecutor and Soleemuddeen is unsubstantiated by any evidence.

That the case should have been got up altogether out of previous enmity against the prisoners, I think, is highly improbable.

That the prisoners did carry off the prosecutor's wife by force and were seized, as stated, appears to me to be fully esta-

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blished. And to this extent the law officer appears to consider the evidence good, but he acquits the prisoners of the crime of rape charged, which is supported only by the statement of the woman. It would have been safer for the joint-magistrate to have committed the prisoners on a second count for carrying off the prosecutor's wife by force with intent to ravish her or for other evil purpose, but the statement of the woman supported as it is by her declarations made at the time of her rescue by the evidence as to the state in which she was found, and the other circumstances that have come out on evidence, appears to me to be sufficient for conviction.

The case is one of a very aggravated nature and I am of opinion that a sentence of ten years with labor in irons will not be too severe a punishment.

It is necessary for me to refer the case for the orders of the superior Court, till the receipt of which, the prisoners will remain in *hajut*.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) Making every allowance for the state of mind which the alleged object of the prisoners' violence would have been in, had she been subjected to the treatment she deposes to, we are unable to reconcile the important discrepancies alluded to by the sessions judge in her statements before the magistrate and before the police; and these discrepancies in themselves would, we think, be sufficient reason for discrediting the rest of the evidence for the prosecution. Independently of them, however, this evidence breaks down in the discordant statement of the witnesses Tara Gazee, Dhonoo Gazee and the others, who depose to the seizure of the two prisoners, after their alleged perpetration along with the third person, not arrested, of the twice-repeated rapes. According to the account of the woman, of these witnesses and the boy, Ashgur Ali, the alarm was given by the cries of the children immediately after the woman had been carried from her house. The place to which she is represented to have been carried is at a very short distance from the house, the boy, Ashgur Ali, is stated to have followed a short distance and immediately after to have been joined by the witness Dhunnoo Ghazee, and others, when they went and liberated the woman, and seized the two prisoners now before us. Now, had there been this immediate alarm, pursuit and capture, it is impossible that there could have been time for the three men each to have effected successive rapes on the woman in the manner she deposed to so positively before the police and before the sessions. Under all these circumstances, and looking at the general tenor of the evidence given, we reject it as untrustworthy, and acquit the prisoners of the crime with which they have been charged.

PRESENT:

J. S. TORRENS, ESQ., *Officiating Judge.*

PANDUB SINGH AND GOVERNMENT

versus

KROOSTOH NAIK.

Cuttack.

1856.

August 20.

Case of KROOSTOH NAIK.

Prisoner found guilty on a charge of arson sentenced to three years' imprisonment with labor and irons.

CRIME CHARGED.—Arson in having set fire to the thatch of a cutcherry house belonging to the prosecutor's master, Beecheetranund Doss and burning a portion of the thatch of the said house on the 19th March, 1856.

CRIME ESTABLISHED.—Arson.

Committing Officer.—Mr. A. S. Annand, magistrate of Pooree.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 5th April, 1856.

Remarks by the sessions judge.—Pandub Singh, prosecutor *versus* Kroostoh Naik defendant. Prosecutor is guard of the cutcherry of Algoon; on 9th March, at 8. P. M. he was at a tank 100 *haths* from the cutcherry, hearing a cry of fire he ran up, was told that defendant had set fire to the cutcherry and had gone to his house. He followed for 150 *haths* and then came on defendant and seized him. Defendant's paddy was attached and he did this through spite.

Defendant Kroostoh Naik confessed before the jemadar that he burned the thatch. Before the darogah said, Niddee gave the fire to Phuggoo, who set fire to it. Before the magistrate too he confessed to privity. Before me he denies and says he is an enemy of Niddee and Phuggoo.

Niddee Jennah is eye-witness to the fact, at first he was classed as a defendant by the police.

Niddee Naik No. 9, Phuggoo Jennah No. 10, Gunga Purreera No. 11, and Boollah Biswah No. 12, gave circumstantial evidence on various points. No. 9 saw him near the cutcherry just before the fire. The *sooruthal* is not correctly drawn up. He was committed to the sessions on the 19th of March. On the 4th April, I took up the case, but could not finish it until the 5th for want of day-light.

There is I find a difficulty in supposing that prosecutor had time to run up to the house from the tank and then run 150 *haths* and come up with defendant before he got to his house, but if defendant waked at first it might be the case; however leaving this point it is proved that defendant is guilty of arson and that part of his confession which shows that Niddee and Phuggoo agreed with him to fire the house and that Phuggoo did it, cannot be reconciled with his defence before me in which

he says these two are enemies of his. If so, they would never have joined in the commission of a crime, and so I believe his first confession before the jemadar. The law officer finds him guilty on strong presumption of arson, and I agree with him. Through enmity, on account of the attachment of his paddy for rent, he set fire to the thatch of the cutcherry of Algoon and I sentence him to imprisonment for three (3) years with labor and irons.

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Case of KROOSTOH NAIK.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens.) The depositions of the prosecutor and of the witnesses Niddee Jennah and Phuggoo Jennah correspond. There is no doubt of the cutcherry having been set fire to, and of the prisoner's presence at the time. The mode of his seizure after his making away is very clearly stated by the prosecutor; and the evidence of prisoner's own witnesses even bears out this part of the statement. I agree with the sessions judge that the confession made in the mofussil gave the true account of the prisoner's act; and as I see no reason to interfere with the judgment, it is confirmed.

PRESENT:

J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND SHAMIERAM MALEE
versus
SHEIKH ANEES.

Sylhet.

1856.

August 20.

Case of SHEIKH ANEES.

Orders of the sessions court, sentencing prisoner on a charge of theft, a notorious bad character before frequently convicted, to seven years' imprisonment with labor and irons, confirmed.

CRIME CHARGED.—Theft of property to the value of Co.'s Rs. 1-7-6.

CRIME ESTABLISHED.—Theft.

Committing Officer.—Mr. J. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shaw, officiating sessions judge of Sylhet, on the 23rd June, 1856.

Remarks by the officiating sessions judge.—The prisoner on the 9th of June last, a little before sunset, went to the prosecutor's house. He stated he was a resident of Pergunnah Banoogach in thannah Rajnugur and that he was a physician, and under pretence of preparing medicine for the prosecutor's sister-in-law took from him (the prosecutor) a *lotah*, &c., articles numbered, 1, 2 and 3. The prosecutor being awoke at night by a noise, went outside his house and seeing that the prisoner was running away, followed him and seized him with the articles Nos. 1, 2 and 3, in his possession, and which he had stolen.

The prisoner before the police and the magistrate confessed his guilt and admitted the truth of the prosecutor's statement.

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Case of SHEIKH ANEES.

Before this court the prisoner said nothing in his defence The confessions of the prisoner both before the police and the magistrate are proved to have been voluntarily made and the property stolen (Nos. 1, 2 and 3, produced before the court) was also recognized and proved to belong to the prosecutor.

The prisoner is a notorious bad character and was previously convicted in a case of burglary and sentenced to ten years' imprisonment, he was twice charged with committing sodomy in the jail, and in one instance was sentenced to nine years' imprisonment but was released by the orders of the Court of Nizamut Adawlut.

In concurrence with the verdict of the assessors, I convict the prisoner and sentence him to seven years' imprisonment with labor in irons in banishment from the district, as I consider imprisonment in the jail of Sylhet, where the prisoner has acquired such notoriety by his infamous propensities would be useless. Vide the abstract* of the magistrate's grounds of commitment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens.) The prisoner pleaded guilty before the sessions and had confessed at the thannah and before the magistrate. He now prefers an appeal, representing that the prosecutor had got up the charge against him owing to his jealousy on account of the prisoner's visits to his wife. The previous bad character and conviction of the prisoner fully warrant the sentence which has been passed on him, and the orders of the sessions court are accordingly confirmed.

* The defendant in this case is a noted character and one of the greatest rogues in the district, he has been frequently punished before and was released from jail only about one and a half years ago after suffering ten years' imprisonment. As to his character, as may be seen by turning to page 673, of the Nizamut Adawlut Reports for November, 1854, in the case of Pera Palung and Government *versus* this present defendant; he was the torror of the jail whilst an inmate of it and my great object in committing him under the hopes that he may be punished this time according to the powers vested in session judges under Reg. XII. of 1817, Section 8, Clause 5, viz. by being sent out of this district.

This case is clearly proved by the evidence of the witnesses and his own candid confession. The theft it is true is a very small amount, but that, in such a case, cannot lessen the crime. The circumstances under which the theft was committed add still more to it when coupled with the defendant's character, for he not only changed the name of his place of abode, &c., but under pretence of making up medicines in the articles stolen, stole them, thus adding fraud and breach of trust. Having thus expressed my grounds and the express circumstances which have, (according to Construction 391, paragraph 5, and Circular Order No. 239 of volume I.) led me to commit this case, I accordingly under Regulation XII. of 1818, Section 3, Clause 2, commit the prisoner to take his trial before the sessions court, this 11th June, 1856.

PRESENT:

J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND MOFOOLEE MUSSULMANEE
versus
AMEER SHEIKH.

Beerbhoom.

1856.

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Case of AMEER SHEIKH.

Orders of sessions court sentencing prisoner to fourteen years' imprisonment with labor and irons, for wounding with intent to kill. Confirmed.

CRIME CHARGED.—Wounding Mofoolee Mussulmanee, prosecutrix (his wife) with intent to kill.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 31st May, 1856.

Remarks by the sessions judge.—On the 12th September, 1848, the prosecutrix, then a girl of twelve or fourteen years of age, was sleeping with her husband, she was suddenly awakened by his cutting her throat, on accomplishing which he ran off, and was not apprehended till lately; the prosecutrix states that she does not and did not wish to prosecute, but has done so at the instance of the authorities.

The fact is clearly proved by the witnesses, who state that the woman would have been in danger of her life, had not her wounds been cured by the surgeon, and this is corroborated by a letter from the then civil surgeon, which mentions the wound as three inches long and the wind-pipe severed and that her life was in danger.

The only motive for the crime appears to have been the refusal of the girl to leave her home and go to live with her husband; there was no sudden quarrel nor can I discover any signs of jealousy.

The prisoner before me first confessed, as he had done in the mofussil and before the magistrate, that he was guilty, but subsequently stated that he gave his wife a push, and that she fell down and he ran off.

The jury have found the man guilty of wounding with intent to murder; in this I concur and under Regulation XII., of 1829, sentence him to fourteen years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens.) The wound inflicted by the prisoner was a severe one and done with the worst intent. There are no grounds for interference with the sentence of the sessions court, and the appeal is accordingly dismissed.

PRESENT:

J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND HUREEPERSHAD MUNDUL
versus
MOHABHARUT MUNDUL.

Moorsheda-bad.

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Case of MOHABHARUT MUNDUL.

Orders of sessions court confirmed. Prisoner sentenced to ten years' imprisonment with labor and irons for dacoity with slight wounding.

CRIME CHARGED.—1st count, dacoity with wounding in the house of the prosecutor, Hureepershad Mundul, from which property to the value of Rs. 469-4 was plundered; 2nd count, knowingly receiving and possessing a portion of the plundered property acquired by the said dacoity.

CRIME ESTABLISHED.—Dacoity with slight wounding and having in his possession property acquired by dacoity knowing that it had been so obtained.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. R. P. Harrison, sessions judge of Moorshedabad, on the 2nd July, 1856.

Remarks by the sessions judge.—The prosecutor lives at Sannyaseedangah in thannah Cossimbazar. On the night of the 19th Bysack, his house was attacked by a gang of fifteen or sixteen dacoits and plundered of property valued at Rs. 469-4. The prosecutor was beaten with sticks and slightly wounded on the head. He was also slightly burnt upon the arm by one of the dacoits with a torch. Information was given at the thannah and the mohurir, who was in charge in the absence of the darogah, proceeded on the following morning to the prosecutor's house and commenced an investigation. No clue to the perpetrators of the dacoity was, however, obtained by the police of thannah Cossimbazar.

On the morning of the 20th of Bysack, about sunrise, Manick Chowdhry, witness No. 5, (who is a zemindar in the district) while proceeding attended by his servant, witness No. 3, to the Juddoopore *maidan* (in thannah Gokurn) a distance of five *coss* from the scene of the dacoity, observed two men passing hurriedly along, not by the usual path but through the jungle, each carrying a bundle tied up in a cloth. Thinking their movements suspicious, he directed his servants, witnesses Nos. 3 and 4, to follow and seize them. One of the men who was recognized as Jasoo Burkundaz (afterwards apprehended and acquitted by the magistrate) escaped, but the prisoner was seized with his bundle and taken to the zemindary cutcherry, where the bundle was opened and found to contain two pieces of corah and sixty-five skeins of raw silk. He could give no satisfactory account of how he had obtained this property, first stating one

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Case of MOHABHARUT MUNDUL.

thing and then another, and Manick Chowdhry very properly determined upon taking him to the darogah at Gokurn. The darogah reported the circumstance to the magistrate and the prosecutor was sent to Gokurn to see the property, which he at once recognized as his own (pieces of silk are marked.) He also stated that he recognized the prisoner as one of the gang by whom his house was attacked.

Before the magistrate and also before this court, the prosecutor states that he distinctly recognized the prisoner at the time of the dacoity. He did not know him, but on seeing him at the thannah he at once recognized his features.

Witnesses Nos. 1 and 2, state that they recognized the prisoner and that he was one of those by whom the prosecutor was beaten. The prisoner has marked features, and both the prosecutor and the witnesses state that his face was exposed, though he had a cloth round his head. Unsupported, the recognition would not be of much value, but corroborated as it is, I see no reason to distrust it. The capture of the prisoner with the plundered property in his possession, at a distance of five *coss* from the scene of the dacoity early on the morning after its occurrence, is proved by the evidence of witnesses Nos. 3, 4, 5 and 6.

The property found upon the prisoner is clearly identified as belonging to the prosecutor.

The prisoner pleaded *not guilty*. In his defence he stated that witness No. 3, bore him ill-will, and that he gave him the bundle and then seized him without it. This defence is utterly unsupported. Five witnesses speak to the prisoner's character, but they can say but little in his favor.

The guilt of the prisoner is proved by clear and satisfactory evidence, I convict him of dacoity with slight wounding and having in his possession property acquired by dacoity knowing that it had been so obtained, and sentence him to ten years' imprisonment with labor in irons. The prisoner is further sentenced under Act XVI. of 1850, to pay a fine of Rs. 426-4, that being the value of the property which has not been recovered.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens) The evidence of the witnesses Nos. 3, 4 and 5, prove very satisfactorily the capture of the prisoner on the morning after the dacoity, carrying away some of the plundered property by a concealed path. Their account of the manner in which he was observed, followed and seized, bears on it the stamp of truth, and there could especially have been no reason for the witness No. 5, Manick Chowdhry, having invented what he so circumstantially deposes to. The defence of the prisoner that the plundered property was brought by the witness, Ramjee, and of his having from enmity deposed to having found it on the prisoner is quite unsubstantiated and very conclusively upset by

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the evidence of Manick Chowdhry. As to the occurrence of the dacoity there is no doubt, and the property being that of the prosecutor is even admitted by the prisoner himself, and shown by the evidence to have been some of that plundered. Taking into consideration the clearly established fact of the property being found with the prisoner, I see no reason to doubt the rest of the evidence against him, and confirm the order of the sessions judge.

PRESENT:

J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND HYDER SHEIKH

versus

RAMCHAND PATUR (No. 1,) AND BHUJJUN DOSS (No. 2.)

24-Pergunnahs. 1856. August 20. Case of RAMCHAND PATUR and another.

One prisoner, with reference to his frequent previous convictions, sentenced to fourteen years' imprisonment on a charge of burglary. Another prisoner sentenced to five years.

CRIME CHARGED.—1st count, burglarious entry into the house of Hyder Sheikh and theft therefrom of property valued at Rs. 4-8 ; 2nd count, receiving and having in their possession property, knowing the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Burglary and theft in the house of Hyder Sheikh and receiving and having in their possession property knowing the same to have been obtained by burglary and theft.

Committing Officer.—Mr. H. L. Dampier, magistrate of Howrah.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 3rd May, 1856.

Remarks by the additional sessions judge.—Prosecutor lives at Howrah, Mohullah Joolaha. He was away employed from home at no great distance, on the morning of the 10th January last, his cousin Daen Alli (witness No. 3,) being at the time asleep in an outside southern verandah. Prisoners taking advantage of this state of things, approached the house from a bit of waste ground to the north, and entered the premises on that side by cutting the string latch of a mat door. They were emerging or had just emerged with all the property they could lay their hands on, (some clothes and a brass jug,) when Daen awoke, from the slight noise they made, and gave the alarm, on which witnesses Bidesee and Kashee ran up and seized the thieves, one Bhujjun with the clothes and a knife (for cutting the mat-door fastening) upon him, and the other Ramchand Patur without the brass utensils, which the instant before he had been

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seen on the commencement of the pursuit to throw into a tank, but which he easily fished out of the tank again when required to do so after being seized.

The defence is altogether unworthy of consideration. The prisoner Ramchand Patur lives a mile off and says he was seized near the prosecutor's house by Sheikh Bidesee for attempting to relieve nature there, while the prisoner Bhujjun Doss, who lives quarter of a mile off, merely says he was near prosecutor's house in search of employment from the rail-road. Neither of them pretend there was any quarrel, or any ill-feeling between them and the prosecutor, or his witnesses previously.

The law officer concurs in the conviction of both prisoners (whose witnesses in no way clear them of the charge brought against them) and I sentence them as follows: Ramchand Patur is an irreclaimable thief and burglar. In 1846, he underwent fifteen months' imprisonment for theft, in 1847, 3 years for burglary and theft, and again in 1852 three years for theft. Bhujjun Doss has been also in jail for three weeks for theft. Ramchand Patur is imprisoned for fourteen years from this date with labor and irons, and Bhujjun Doss for five years also with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens.) The charge is clearly established against the prisoner appellant. In his petition of appeal he repeats what he had urged before the magistrate and sessions judge, adding that the prosecutor entertained enmity towards him. Had this been the case he would have stated it before. The witnesses named by him could not depose in support of the defence he had made, and although the sentence passed by the sessions judge is a severe one, it does not appear too much so with reference to the frequent previous convictions of the appellant for similar offences. The orders of the sessions judge are confirmed.

PRESENT:

J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND KISHEN MUNDUL

versus

RAMAH CHUNG (No. 1,) BEHAREE CHUNG (No. 2,) SHEEBNATH CHUNG (No. 3,) JEEBUN CHUNG ALIAS JEEBA CHUNG (No. 4,) SOOBUL CHUNG (No. 6,) BYSNUB CHUNG ALIAS BYRAGEE CHUNG (No. 7,) KOKARAM CHUNG (No. 8,) AND NUBEEN CHUNG (No. 11.)

Dacca.

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August 20.

Case of RAMAH CHUNG and others.

Orders of the sessions court sentencing prisoners to six years' imprisonment with labor and irons for riot with culpable homicide confirmed.

CRIME CHARGED.—1st count, wilful murder of Gopee Chung Beparee; 2nd count, riotously assembling armed with *lattees* and sticks, and assaulting and injuring Gopee Chung Beparee so severely that he died in consequence; and assaulting and injuring Gopeenath Chung, Paupocha Chung, Kheroo Chung and Juggernath Chung; 3rd count, accomplices in the above crimes; 4th count, aiding and abetting in the above crimes.

CRIME ESTABLISHED.—Riot, attended with culpable homicide of Gopeenath Chung, Paupocha Chung, Kheroo Chung and Juggernath Chung.

Committing Officer.—Mr. R. C. Raikes, officiating magistrate of Dacca.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 22nd April, 1856.

Remarks by the officiating sessions judge.—The deceased and the four wounded men took a farm of a patch of land for the purpose of thatching grass. Witnesses Nos. 5 to 10, were employed by them as coolies. The farm of this land had been held on the previous year by Rama Chung, prisoner No. 1, of the town of Degoon. On the morning of 12th February a mob of thirty or thirty-five people from Degoon attacked the party of deceased whilst employed cutting grass, beat them and went away. Witnesses Nos. 1 to 4 were not much hurt, but deceased was so injured that he died at 4 A. M. of the following morning.

Witnesses Nos. 1 to 5 and 8, started by boat for the thannah with the body and on their arrival towards evening of 13th the darogah took the depositions of Nos 1 to 4; they deposed that prisoners with others whose names they did not know, were their assailants. The coolies, subsequently examined, swore to these and other parties.

The prisoners were apprehended on the 15th and 16th February, and they plead *not guilty*, and attempt to prove *alibis.*

The law officer convicts them on the 2nd count and declares them liable to *tazeer.*

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The evidence given on the evening of 13th is trustworthy, it was promptly taken and promptly acted on, it does not appear who struck the blows which proved fatal, there is no particular blow sworn against any prisoner individually.

The rioters do not seem to have come with the design of killing deceased, had such been their intention they would probably have killed him on the spot and carried away the body for the purpose of concealment, their design was to get possession of the farm by beating and bullying deceased and his party into relinquishing it.

Finding prisoners guilty of riot attended with culpable homicide, I sentence them severally to six years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens.) The prisoners, in their petition of appeal, urge that the charge was got up against them through the enmity of the prosecutor, and that the alleged affray did not take place, that the deceased had long been in a dying state and died of disease. The evidence of Doctor Green, the civil surgeon, beyond doubt establishes that the deceased died of the blows inflicted on him, by which several of his ribs were broken, and the allegations of the prisoners in appeal as well as the *alibis*, which they set up before the sessions, are clearly false. Of twelve prisoners committed to the sessions, the judge has released four in respect to whose complicity, there was the least doubt. The evidence is strong against the prisoners convicted, and the case has been carefully and ably tried by the judge whose sentence is confirmed.

PRESENT:

J. S. TORRENS, Esq., *Officiating Judge.*

SHIBCHUNDER DUTT and GOVERNMENT

versus

KHODABUX (No. 6.) TARACHAND MUNDUL CHOWKEEDAR (No. 7,) MONEROODHI CHOWKEEDAR (No. 8,) and TOREKOOLLAH (No. 9.)

Jessore.

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Case of Khodabux and others.

Orders of sessions court sentencing prisoners severally to 12, 9, and 7 years, for dacoity, confirmed.

CRIME CHARGED.—Dacoity in the houses of the prosecutors, Shibchunder Dutt and Godadhur Dutt, on the night of the 8th of April, 1856, corresponding with the 27th of Chet 1262, B. S. and plunder of property belonging to Shibchunder valued at Rs. 91-12 and to Godadhur at Rs. 312-9.

CRIME ESTABLISHED.—Same as the crime charged.

Committed by Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of zillah Jessore, on the 29th of May, 1856.

Remarks by the officiating sessions judge.—The trial is conducted under the provisions of Act XXIV. 1843.

The complainants are brothers, residents in the village of Baroree, thannah Singhea. They assert that on the night of the 27th Chet last a gang of dacoits attacked their houses, which are close together, and plundered and carried away property of the aggregate value of Rs. 404-5, of which, property valued at Rs. 91-12 belonged to the complainant Shibchunder Dutt, and the balance, Rs. 312-9, to his brother Godadhur Dutt. The latter amount consisted mostly of cash 250 Rupees. Shibchunder Dutt did not recognize any of the criminals, but Godadhur Dutt affirms he distinctly recognized from the light of the *mussals* the prisoners Nos. 6, 7 and 9, who are residents of neighbouring villages and prisoner No. 8, the Chowkeedar of the mehal he lives in. Information was transmitted to the thannah the following morning by the complainants and (strange to relate) by prisoners Nos. 6 and 8, the former being a dependent of the zemindar and the latter as abovementioned, the Chowkeedar of the division in which the dacoity took place. The prisoners were promptly arrested by the police on the evidence of the eye-witnesses but no property was recovered. The evidence of the witnesses for the prosecution may, for the sake of conciseness, be classed as follows.

Witnesses Nos. 1, 2, 3, 4, 5, 6, 7 and 8, all aver to having recognized distinctly, by the light of the *mussals*, the prisoner No. 6, Khodabux, who, though disguised with chalk and clothes,

they are confident they saw, as he is neighbour of theirs and more or less constantly in their village.

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Witnesses Nos. 9 and 10, heard this prisoner No. 6, Khodabux freely confess before the police darogah of his being concerned in the dacoity.

Witnesses Nos. 15 and 16, heard the prisoner Khodabux confess before the law officer at the sudder station of his guilt. The witnesses Nos. 2, 3 and 7, aver to having recognized on the night of the dacoity, prisoner No. 7, Tarachund Mundul Chowkeedar. (Before the magistrate, however, witness No. 7, denied having recognized before the police this prisoner, and he is now unable to give any satisfactory explanation of his material discrepancy in his evidence before the courts and the police.) Witnesses Nos. 12, 13 and 14, heard this prisoner, No. 7, Tarachund Mundul, confess before the police freely and without compulsion or persuasion his participation in the dacoity.

Against prisoner No. 8, Moneroodhi Chowkeedar is the evidence of eye-witnesses Nos. 1, 2, 3, 4, 5, 6 and 8.

Against prisoner No. 9, Torikoollah is the evidence of eye-witnesses Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

The prisoner No. 6, pleads *not guilty*, and in defence cites witnesses to his having a good character.

This prisoner has signed both the confessions he made before the police and the law officer, the signatures on which tally, but he declines signing his defence, asserting he is unable to write.

Prisoner No. 7, pleads *not guilty*, and has witnesses to prove that the police have, out of spite, arrested him, that the darogah once assaulted him, and that on the night of dacoity he was in the village of Jamdeey, distant two *coss* from the locality where the dacoity was committed.

The prisoners Nos. 8 and 9, both plead *not guilty*, and that witnesses can prove they are good characters. The witnesses in support of prisoner No. 6, Khodabux's plea of good character, five in number, state, in general terms, that they think the prisoner was of good character and supposed to earn an honest livelihood until his arrest on the present charge, since which they have their suspicions and are at a loss what to think correctly of him.

The witnesses cited by prisoner No. 7, to establish the plea of *alibi* are, as persons of their class ordinarily must be, very ignorant as to dates, even of the day of the month they give their evidence on, and yet they can solemnly affirm, without any explainable reason, that on a certain date specified, the prisoner No. 7, accompanied them to a village, Jamdeey, distant two *coss* from the scene of the dacoity, the date mentioned being that on which the dacoity occurred.

The witnesses as to character cited by prisoner No. 7, mention

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he has not been previously suspected of dishonesty and for ten years has been a village chowkeedar and given satisfaction to the villagers, three of them are aware of the prisoner having incurred the displeasure of the zemindar's naib through giving evidence on one occasion in a petty case before the magistrate, and they state the naib, in question, has also authority in the village of the prosecutors in this case it being comprised in his master's zemindary; none of them can speak from personal knowledge of any acts of severity or oppression exercised by the police darogah over this prisoner.

The witnesses cited by prisoner No. 8, Moneroodhi Chowkeedar are merely as to character. Their evidence is not very positive. They know the prisoner has been chowkeedar for four years and given satisfaction, and that previous to this occurrence, suspicion of his being dishonest had not rested on him.

Though prisoner No. 9, before this court pleads only previous good character in defence, his witnesses give evidence partly to show that *one day* (they cannot remember the date) they saw him at the house of Basser Sirdar, witness No. 25, which is situated within *call* (*dak*) of the scene of the dacoity.

The only discrepancies in the evidence for the prosecution are, that the complainants both state they did not directly after the dacoity hear from any of the eye-witnesses that they had recognized the dacoits, whereas the witnesses all say they communicated their knowledge to them at once. I consider this discrepancy not very material, as it may be accounted for in the prosecutor's probable idea that suspicion of collusiveness might be attributed to them and their witnesses, had they honestly admitted the circumstance. However incorrect such an inference and such concealment, it does not carry with it that amount of guilt that would necessarily invalidate their testimony.

The evidence of the eye-witnesses (with the exception of that of the witness No. 7, the discrepancy in whose evidence is described above) is very positive and direct as to the recognition of the prisoners. Their opportunities for observing them were favorable and the fact of the prisoners being all residents of contiguous villages and so before known to the witnesses, increases the probability that they would not be easily deceived in their recognition. The weight of their testimony is further not impeached by any reasonable ground of suspicion that they are interested parties, who would willingly perjure themselves to bring about the conviction of the accused. An inference favorable to the validity of their testimony may also be deduced from the support given to it, by the confessions of prisoner No. 6, Khodabux, both before the police and the magisterial authority, especially as the evidence before the police of eye-witnesses Nos. 3, 4, 5, 6, 7 and 8, was given and taken down in writing

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before the arrest and confession of the above-mentioned prisoner, No. 6.

The evidence in favor of the prisoners is throughout inconclusive to establish any particular points of defence. The witnesses in support of the *alibis* are, as before stated, all persons quite incompetent to give positive evidence where dates are a matter of importance, and hence, as far as regards comparison, the weight of trustworthy and conclusive testimony on the part of the prosecution far exceeds that for the defence of the accused.

Considering for the above reasons that the prisoners Nos. 6, 7, 8 and 9, of the calendar are guilty of the charge on which they were committed for trial, I sentence them as follows.

The prisoner No. 8, Moniroodhi Chowkeedar, in consideration of the fact of his being the chowkeedar of the very mehaul in which he committed the dacoity, I sentence to imprisonment with hard labor and irons for twelve years in banishment.

The prisoner No. 7, Tarachand Mundul, Chowkeedar, in consideration of his being likewise on the police force, though not chowkeedar of the very village in which the dacoity was committed, I sentence to imprisonment with hard labor and in irons for nine years in banishment.

The prisoners Nos. 6 and 9, Khodabux and Torikoollah, I sentence to imprisonment with hard labor and in irons for (7) seven years in banishment.

The attention of the officiating magistrate of Jessore, will be called to the incorrect manner the comparative statement of evidence given before him has been drawn out, the entries of witness No. 3, against prisoner No. 6, and of witnesses Nos. 6 and 8, against prisoner No 8, not being made, though on the records of their evidence before the officiating magistrate, their recognition of the respective prisoners is distinctly in writing.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens) Prisoners urge in their petition of appeal that the charge against them must be considered unestablished, as none of the property taken in the dacoity has been discovered; they also urge that their conviction had been brought about by the machinations of the darogah. After perusal of the evidence before the magistrate and sessions judge, I am not able to discover any material defect which can invalidate it. The evidence of the co-prosecutor as to the recognition of the prisoners, there is every reason to credit from the manner in which it is given, and it is supported as to those who have been convicted by the testimony of several other witnesses as well as by the confession of prisoner No. 6, both before the police and before the magistrate, and that of No. 7, before the former. I see no reason to interfere with the sentence passed.

PRESENT:

J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND DOORGAMONEE BEWA

versus

GOPAUL RAJBUNSEE (No. 1,) AND CHEENEEBASS RAJBUNSEE (No. 2.)

Beerbhoom.

1856.

August 21.

Case of GOPAL RAJBUNSEE and another.

Orders of the sessions judge sentencing to seven years' imprisonment, two prisoners found guilty of dacoity, confirmed.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutrix, in which property to the value of Rs. 40, was plundered; 2nd count, No. 1, knowingly receiving and having in his possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. G. Hewett, deputy magistrate of Cutwa, with full powers of magistrate.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 19th March, 1856.

Remarks by the sessions judge.—Plaintiff, the sole occupant of her house, was eating her supper on the night of the 11th January, when the prisoners, whom she recognized at the time as neighbours of her own, entered either through the door, which was not fastened, or the window, which was open; No. 2, held his hand over her mouth, and No. 1, with an axe, which he had brought with him, broke open her boxes and handed out the property to the value of about Rs. 40, to some accomplices, who were waiting outside; having rifled the house, they were running off, when they were caught by two chowkeedars, who had been attracted by the cries of the plaintiff. Property, No. 1, was found with No. 1, and the remainder in his house, No. 8, being hidden in a stack of straw.

The evidence corroborates this story, but there is this difficulty that as the two men were caught immediately (and one of them before he had reached his house, where the property was found) it cannot be shown how it got there, the only possible explanation is that it might have been placed there by the accomplices who were waiting outside and who took themselves off before the departure of Nos. 1 and 2. The property was only identified by a single witness, but as it agreed with the list given in by the plaintiff, I have ordered it to be given to her.

Prisoner, No. 1, who had confessed in the mofussil, denied before the magistrate and myself, stating that the case was got up through the enmity of the villagers and that he was taken by them out of his house. He could give no reason for the enmity nor could he bring any proof of it, or that the property

which he claimed as his own was his, he allowed his confession, but said he had said what he was told to say by the villagers.

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Case of GOPAL RAJBUNSEE and another.

No. 2, gave a simple denial and called no witnesses.

I consider the two men guilty of dacoity and have sentenced them to seven years each with labor in irons.

The conduct of the two chowkeedars, Okoy and Nurhuree, deserves commendation, and I have requested the magistrate to give them a reward of Rs. 10 each, for their conduct on this occasion

Remarks by the Nizamut Adawlut.—(Present: Mr. J. S. Torrens.) Accepting the evidence of Okoy Chowkeedar, witness No. 1, and Sreenath, witness No. 2, taken together with the confession of the prisoner Gopaul, in the mofussil, it appears that there were more persons concerned in the dacoity than the two who entered the house of the prosecutrix, and that they went out in gang for the purpose of committing dacoity. It appears that the prisoner, Gopaul Rajbunsee, was armed with a *korali*, and that the attack was effected on prosecutrix's house with open violence; and under these circumstances and the arrest of prisoner with the property, I see no reason to dissent from the finding and conviction of the sessions judge.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT

versus

BISHNATH (No. 3,) AND DEENDYAL (No. 4.)

Sarun.

1856.

August 22.

Case of BISHNATH and another.

Orders of sessions judge confirmed which sentenced prisoners to three years' imprisonment on a charge of perjury, in having falsely sworn that they were not related to each other.

CRIME CHARGED.—No. 3, perjury in having on 8th April, 1856, corresponding 18th Chett, 1263, F. S. deposed under a solemn declaration taken instead of oath under Act V. of 1840, before the deputy magistrate of Sewan, that he was no way related to prisoner No. 4, and that he was not his uncle, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; No. 4, perjury in having on the 8th April, 1856, corresponding 18th Chett, 1263, F. S. deposed under a solemn declaration taken instead of oath under Act V. of 1840, before the deputy magistrate of Sewan, that he was no way related to prisoner No. 3; such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Same as crime charged.

Committing Officer.—Mr. J. F. Lynch, deputy magistrate of Sewan, with full powers of a magistrate.

1856.

August 21.

Case of BISHNATH and another.

Tried before Mr. Henry Atherton, sessions judge of zillah Sarun, on the 7th June, 1856.

Remarks by the sessions judge.—This is a case of perjury committed by the prisoners when examined under Act V. of 1840, as witnesses in a case of cattle-stealing against Ruggoo Ahir, witness No. 10, and others. In that case the prisoners denied more than once being related to each other, the object of the denial being that more reliance might be placed on their testimony. Afterwards on their relationship being asserted they admitted it when they found they could no longer conceal it, and it is shown that prisoner No. 3, is uncle of prisoner No. 4. They acknowleged having committed perjury before the deputy magistrate, and confess the crime in my court and therefore, in concurrence with the law officer, I convict them of the crime charged and sentence them to three years' imprisonment each with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) The prisoners have deliberately deposed to there being no relationship between themselves, such deposition being false and material to the issue of the case. We therefore see no reason to interfere with the sentence passed on them by the sessions court and reject their appeal.

PRESENT:

J. H. PATTON, ESQ., *Judge* AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH KHATER (No. 3.)

Sylhet.

1856.

August 22.

Case of SHEIKH KHATER.

The falseness of the statement for which prisoner was convicted of perjury not being proved, sessions judge's orders reversed and prisoner acquitted.

CRIME CHARGED.—Perjury, in having on the 22nd January, 1856, deposed under a solemn declaration taken instead of an oath before the magistrate of Sylhet, (in answer to a question viz. whether Alim is his cousin or not) that no, he is not my cousin, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M Shawe, officiating sessions judge of Sylhet, on the 28th March, 1856.

Remarks by the sessions judge.—The prisoner was cited as a witness in a case of mutual affray, which had taken place between Procashchunder Doss and others on the one side *versus* Juggernath Deb and others 2nd party.

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August 22.

Case of SHEIKH KHATER.

The prisoner deposed before the magistrate under a solemn declaration taken instead of an oath that he was not a relative of Sheikh Alim one of the defendants; on the day following Juggernath Deb one of defendants of the 2nd party informed the court that the prisoner was a cousin of the defendant Sheikh Alim, and on the prisoner being examined he deposed under a solemn declaration taken instead of an oath that he was not Sheikh Alim's cousin. The magistrate committed the prisoner on the following charge, "perjury in having on the 22nd January, 1856, deposed under a solemn declaration taken instead of an oath before the magistrate of Sylhet (in answer to a question viz. whether Alim is his cousin or not) that no, he is not my cousin; such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case."

The evidence in the case fully establishes the fact that the father of Sheikh Alim, viz. Sheikh Jannoo *alias* Janoollah and the prisoner's father "Lutiff" were brothers having the same mother and their grandfather was one Sheikh Azye. The prisoner's deposition was also attested by the mohurrir who recorded the same. It is clearly proved that the prisoner with a view of procuring his cousin's (Sheikh Alim's) release from the charge brought against him in the magistrate's court, wilfully and deliberately deposed falsely under a solemn declaration taken instead of an oath on a point material to the issue of the case.

The assessors returned a verdict of guilty of perjury against the prisoner, in which I concurred and sentenced the prisoner to imprisonment with labor in irons for a period of three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) We are not satisfied that the evidence on which the prisoner has been convicted of perjury clearly brings home the charge. In his petition of appeal he still asserts that he bears no relationship to the prisoner, who was under trial when his deposition was taken; and we cannot find in any of the examinations to which he was subjected, any admission which would show that they were descended from a common ancestor or bore the relationship one with another, which is so positively deposed to by the witnesses for the prosecution in this case. These witnesses are altogether six in number of whom five are Hindoos and one only a Mahomedan. The Hindoo witnesses, we think, could scarcely have had that knowledge of the three generations of the prisoner's family to enable them to depose so directly as they have done on the subject. We find, moreover, that all the witnesses gave their ages in the sessions court as very many years in advance of what they had stated before the magistrate; for instance, the Mahomedan witness Sheikh Edoo, who stated before the magistrate

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that he was only 40 years of age, in the sessions court gave his age as 60, this evidently shewing a desire on the part of the witnesses to denote that they had a knowledge of the descent in the prisoner's family which they really did not possess. As the conviction has been solely on grounds of reliance on this evidence, we are unable to concur in it and therefore acquit the prisoner and direct his release.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

24-Pergunnahs. 1856. August 22. Case of OMACHURN DUTT.

GOVERNMENT AND DEGAMBER DOSS

versus

OMACHURN DUTT.

Orders of the sessions judge sentencing prisoner to five years' imprisonment for burglary confirmed.

CRIME CHARGED.—1st count, burglary in the house of Degamber Doss, and theft therefrom of ornaments, cash and other articles valued at Rs. 106-10-3, the property of different persons; 2nd count, receiving and keeping in his possession property valued at Rs. 63-5, well knowing the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Burglary and theft and receiving and keeping in his possession property, knowing the same to have been obtained by burglary and theft.

Committing Officer.—Mr. H. L. Dampier, magistrate of Howrah.

Tried by Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 15th April, 1856.

Remarks by the additional sessions judge.—Prosecutor is a goldsmith and lives at Sulkea Teelkhaneh. He was working in his shop on the afternoon of the 5th February last when the prisoner, with whom he is not acquainted, came up to him and remained with him for a considerable time; on some pretext or other he left and prosecutor ceased working, shut up all his goods in a box, and carried the box into an adjoining room where his children were asleep. He then went into the cooking room, where his wife was cooking, without the box; on returning subsequently to the sleeping room, prosecutor found it had been forcibly entered through the mat wall, and his box carried off; he at once gave notice at the thannah, and prisoner was suspected and arrested. On searching prisoner's house, the greater portion of the stolen property was found and has been identified as prosecutor's.

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Case of OMACHURN DUTT.

The way in which the prosecutor and several of the witnesses, especially those named in the margin,* have given their evidence is most disgraceful. They all, prosecutor included, contradict themselves and one another on many material points, and from their demeanour and evidence, I am convinced they never saw prisoner's house searched at all, but have allowed themselves to be made witnesses to make the case formal and complete.

* No. 4, Mehr Allee.
,, 10, Premchand.
,, 11, Nilamber.
,, 12, Mohender.

Still the defence is so self-convicting, and the evidence, to a certain extent, so certain to be true as in full accordance with the defence, that there is no resisting the prisoner's guilt.

Prisoner was until five months ago, employed by one Kissen Sircar to weigh salt. He then lost his employment *from being suspected and arrested on suspicion of having been concerned in breaking into the thannah moonshee's house.* It is quite evident he has been without means of honest livelihood, and has been associating with thieves and living on plunder. His defence here is, that he went to prosecutor's house the day of the robbery to recover a debt from a man named Bugwan, who works for prosecutor. He admits when seized on the road, early next morning he denied knowing any thing of the crime, for, he says "the two men who had deposited the stolen property at his house during the night, Juggeo and Tarachand, were then with him, but ran off on seeing the police officer, which at once convinced him the goods were stolen and made him deny all knowledge of them. His story is, that on the night of the robbery Tarachand and Juggoo came to his house with prosecutor's box of jewellery, &c., that the former asked him, (prisoner) to take charge of them for a time as he (Tarachand) was on bad terms with his brother, and did not like to leave them at home, and that he consented, provided the box was not left with its contents as *that* might be recognised! The contents of the box were found hidden under a chest in prisoner's house and the box concealed in a dust heap outside, *prisoner has summoned no witnesses.*

The law officer declares the prisoner liable to discretionary punishment *(tazeer)* on strong presumption of guilt *(ghaliboozun)* and entirely concurring in that verdict, I sentence him to five years' imprisonment with labor and irons.

The magistrate has, I observe, entered the prosecutor as a witness also in his calendar, witness No. 4, did not see the stolen property found, and witness No. 16, does not recognize both articles he is cited to identify.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) We see no reason to interfere with the conviction and sentence of the prisoner, whose guilt is clearly established under the circumstances of his appearance at

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the prosecutor's house on the afternoon of the day of the robbery and the finding of the property on his premises, coupled with his admissions that the articles had been given to him by another late on that night.

We observe that the additional sessions judge has commented on the way in which the prosecutor and several of the witnesses gave their evidence on the point of the finding of the property in the prisoner's house. Whatever may have been the objections, however, as to the manner in which they deposed, we can find no trace of any thing which would affect the credibility of the evidence as recorded. The prosecutor's testimony and that of the witnesses seems to us consistent as to the finding of the stolen articles, and it was not a point in which their evidence was material, as the prisoner admits that the property had been retained in his house.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND THAKOORDASS BANERJEA

versus

PUREEKHIT BAGDEE.

24-Pergunnahs.

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August 22.

Case of PUREEKHIT BAGDEE.

Sentence of the sessions judge which had found prisoner guilty of dacoity on his own confessions and sentenced him to imprisonment in banishment for seven years, confirmed.

CRIME CHARGED.—Dacoity in the house of Thakoordass Banerjea, and plundering therefrom property to the value of Rs. 3,508.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 29th April, 1856.

Remarks by the additional sessions judge.—On the night of the 10th March last, prosecutor's house at Sursona was attacked by a body of twelve or thirteen dacoits, and a considerable amount of property carried off, one of prosecutor's servants being slightly beaten with a bamboo. Prosecutor gave immediate notice to the thannah through Boiragee Sirdar Chowkeedar, who named no one as recognised or suspected. The next morning the police were on the spot when Joodhisteer Malee, the servant of prosecutor's (witness No. 6,) who had been ill-treated by the dacoits, deposed that he had not recognised any one, yet that by the light of the *mussals*, two of the dacoits seemed to him somewhat to resemble two men whom he knew, one Kashee Singh a Durwan in the service of Baboo Kaleepurshun, and one

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Pureekhit Bagdee, the prisoner These men were then arrested, when Pureekhit at once confessed the crime and was carried direct before the magistrate to disclose the particulars. He did so verbally on the night of the 12th March, and was at once sent with the darogah to point out the stolen property, which, however, had been intermediately removed. Prisoner then made a formal detailed confession to the darogah, and being again carried before the magistrate repeated it to him; the magistrate, until after this confession was recorded, refraining from opening the thannah papers. Before me he repudiates his confession as extorted, and says the prosecutor is his enemy, both because he was in the habit of accompanying a relative of prosecutor's (the meaning of this will be apparent hereafter) to the house of a courtesan close to prosecutor's house; and because he refused to take in a slave girl of prosecutor's who had been debauched and was pregnant, into his (prisoner's) house. He, however, cites witnesses to character only; and of them but one, (No. 15,) is able to speak in his favor. His confession in the lower court has been proved by two witnesses (Nos. 18 and 19) to have been made without hope of favor, ill-usage, or coercion.

It appears that prosecutor has an abandoned relative, a zemindar of the name of Kaleepurshun, whose service prisoner was in till two years ago, and with whom he has been till the last moment in habits of drunken intercourse. Prisoner's house is on the road between Kaleepurshun's and prosecutor's. There had been constant disputes between Kaleepurshun and the prosecutor about the indecent conduct of the former, and at last the prosecutor gave orders a mistress of Kaleepurshun should be sent away from the village where prosecutur lived, and that Kaleepurshun himself should also be prevented coming either there or to his (prosecutor's) house. On this Kaleepurshun went to prisoner's house got some toddy to drink, and then proposed to prisoner to join in a dacoity at prosecutor's house to be committed by three durwans, a peada, and some tenants in his, Kaleepurshun's interest. Prisoner assented, and two nights after was the attack made, which is the offence charged in this calendar, prisoner being, he says engaged in it so far, that he remained outside the premises on guard, while his companions plundered them inside. The property was all carried away to Kaleepurshun's house and prisoner received no part of the spoil. It is notorious that dacoities in this part of the country are constantly committed at the instigation of one man of property to injure another. I convict the prisoner of being concerned actively in the dacoity in prosecutor's house on the night of the 10th March, 1856, and I sentence him to 7 (seven) years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H.

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Patton and J. S. Torrens.) The only evidence against the prisoner is his own confessions before the police and magistrate; and proof of the occurrence of the dacoity charged. The confessions are most complete and conclusive, particularly that before the magistrate, which appears to have been taken with every precaution. We see no reason to interfere with the sentence passed upon the prisoner and reject his appeal.

PRESENT:

B. J. COLVIN, ESQ., *Judge*. AND J. S. TORRENS, ESQ., *Officiating Judge*.

GOVERNMENT AND GRIDHAREE GWALA

versus

UNUCHIA DOSADH.

Behar.

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August 25.

Case of UNUCHIA DOSADH.

Prisoner found guilty of culpable homicide, sentenced to fourteen years' imprisonment with labor and irons recommended by the sessions court.

CRIME CHARGED.—Wilful murder of Chuttroo Gwala, deceased.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th June, 1856.

Remarks by the sessions judge.—Buddoo Passee and Mulloo Passee hold two liquor-shops close to each other at Peer Beega.

Witness No. 1, Buddoo Passee.
" " 2, Mulloo Passee.

On the afternoon of 11th May last, the deceased a resident of the neighbourhood, but in the habit of seeking daily labor at Gya, first sat down at witness No. 1's shop and thence went on to witness No. 2's, these liquor venders cannot say why, where shortly afterwards the prisoner came up and addressing the deceased said he had stolen his *dohur* or sheet. The deceased denied on which prisoner seizing him took him away in one direction cuffing and beating him, and afterwards in another direction striking him with a *lohangee* or iron bound club.

Both were next seen by a third liquor vender† of the same place, but whose shop was some four *russees* distant from the two first. The deceased was then in an exhausted state; wanted water, which the prisoner would not give him when this witness caused some to be given to him and then sent them away. Here again the prisoner said the deceased had stolen his *dohur*.

† Wt. No. 8, Gandowree Kulal.

They were last seen by the within witnesses at the Hakim Chuq well in their village of Surbooga distant half a mile from Peer Beega.‡ The deceased was then in a senseless state and the

‡ Wt. No. 9, Thana Koeree.
" " 10, Manik carpenter.
" " 11, Bhekaree Bhooeea.

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prisoner aided by one Jhurree Dosadh carrying the body put it down by the side of the well. Jhurree then went away and the prisoner endeavoured to revive the deceased by washining his body with the *dohur* which they say was stained with blood. They also observed half the ear torn. The last witness reported the matter to the within, the chowkeedar of Surbooga, who thereon apprehended the prisoner at the well as also afterwards Jhurree Dosadh. Witness No. 3's name appears in the calendar as an eye-witness to the fact. He made a lax statement to such effect before the magistrate, but his deposition before the police and this court is to the contrary, and indeed under all the probabilities of the case he could scarcely have been an eye-witness to the fact when in reality not one is forthcoming

No. 3, Kheda.

The mofussil inquest showed some six external marks of violence, mostly bruises, and the right ear half torn. The *post mortem* amply testified to the brutal violence which had caused death. "On opening the chest, the ribs of both side were found fractured with the exception of two or three. On raising the sternon found the lungs had been pierced on both sides by the broken ends of the ribs, and on the left side the vena cava had been ruptured close to its entrance into the heart."

Witness No. 4, Ramchurn Noniur.
,, ,, 5, Seosuhoy ditto.
,, ,, 6, Hukoom ditto.
,, ,, 7, Dr. Allen.

Jhurree Dosadh was acquitted by the magistrate. According to his own statements he was an eye-witness from first to last. He saw the prisoner's repeated acts of violence without attempting to interfere, the last time in a *ruhur* field, and finally assisted the prisoner to carry the deceased to the Hukeem Chuq well. In explanation of such conduct he stated that as his father, a chowkeedar, was absent, he had been told he had better watch the matter. If so, his subsequent conduct is not consistent with such assumed character. He allowed the event to be reported on by the witness No. 11, as further confirmed by his own immediate apprehension through witness No. 3.

The prisoner is a chowkeedar of the neighbourhood and held a small share in the purchase of the produce of an orchard at Surbooga. He told the police and magistrate that he found Jhurree Dosadh with the deceased in an helpless state and assisted him to carry the deceased to the Hukeem Chuq well, adding no further particulars than, before the police, that Jhurree said the deceased was drunk and had wounded himself to bleeding by falling in the *ruhur* field, the last place according to Jhurree where violence took place, and, before the magistrate, that on seeing blood running from the ear he hesitated to assist, but was satisfied on Jhurree's telling him not to mind. He avoided such defences before the court, pleaded ignorance as to

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the cause of deceased's death whether as a thief or otherwise, and that the accusation had been falsely got up against him by Mungur Doss the putwaree of Surbooga, who had previously held the lease of the same orchard. This he had also previously stated before the magistrate. He cited four witnesses who simply deposed to his good character.

* Meer Wuheedoodeen Hyder of town Behar.
Sheikh Moozuffur Alli, Muneepore, zillah Behar.
Bhooputlall Meha Bega, ditto.
Kheernur Singh of Bujara ditto.

The jury, unanimously returning a verdict of acquittal of wilful murder, convict the prisoner of the culpable homicide of the deceased.

The *post mortem* proves that the deceased was brutally beaten to death, but eye-witnesses to the fact are wanting. When seen by the witnesses Nos. 1, 2 and 8, the deceased was able to walk, which he would have been incapable of after the infliction of the fatal injuries found by the *post mortem*. The witnesses were consistent under examination as to the prisoner's having been unarmed himself when he seized the deceased, whilst the deceased was armed with an iron bound club, as his son the prosecutor says was his father's habit. Witnesses Nos. 1 and 2, describe the prisoner as beating the deceased with his club, yet witness No. 8 saw it in the deceased's hands. Any how, as already shewn, the beating with this weapon as seen by witnesses Nos. 1 and 2, will not account for the fatal injuries. Moreover the iron rings with which this weapon is armed would have left external marks of a different character. Dr. Allen is of opinion that such external injuries must have been caused by repeated blows and "not unlikely stamped upon." The deceased's singular submission under such prolonged maltreatment is only to be accounted for, either from his being intoxicated at the time, or from the prisoner's being the most powerful and violent man of the two. There is no reliable evidence of the first, although statements to such effect were originally made, as is not uncommonly done with the object of softening down occurrences of this kind. Besides the medical officer would scarcely have failed to detect traces thereof, had such been the case. Any thing of the sort also does not tally with the circumstances of the case as deposed to. The deceased was returning home after his day's labour. He could scarcely have had time to do more than purloin the sheet, and had probably visited the liquor shops somewhat out of his direct route, in the hopes of disposing of it, or concealing himself when he was overtaken by the prisoner. The evidence under examination agrees that the prisoner when seizing the deceased was only clothed in a *dhotee*, whilst the deceased wore the *dohur* which the prisoner said he had stolen. Though contradicted by witness No. 11, that "the *dohur* was on the deceased's body," and somewhat

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by witness No. 8, "that it was another *dohur* which the prisoner claimed," yet witnesses Nos. 9 and 10, agreed that the prisoner had the *dohur* round his waist at the Hukeem Chuq well. Both club and sheet were found with the body at that place, the prisoner, according to these witnesses, having taken the latter off his own waist for the purpose of using it as he must have been well aware of at the time, in the vain attempts to recover the deceased. All allow the prisoner to be the most powerful man. He is young and able-bodied whilst the deceased was elderly. In addition thereto the prisoner was pursuing and punishing with all the wanton power of a chowkeedar, a thief who had dared to rob him, a matter in which no native spectator, specially of the witnesses' class, would venture to interfere with, except by assisting, and which may thus at the same time account for these witnesses' indifference and the deceased's passive submission throughout the occurrence.

Looking therefore at the weak and contradictory nature of the defence, which on its own showing is of the most forced and improbable kind, the circumstances of the case under the foregoing considerations seem naturally enough told by the witnesses for the prosecution and may, I think, be depended on. It is possible more direct evidence might have been forthcoming had Jhurree Dosadh been better handled and examined in the first instance. As the evidence now stands it amounts to this much, that the prisoner seized and took away the deceased, maltreating him as he went, and at last brought his lifeless body to the Hukeem Chuq well. The presumption from the prisoner's conduct is, that the act was unpremeditated, committed in the passion of the moment, though consonant to the habits of his class, it was cruel in the extreme. I accordingly convict the prisoner, on strong presumption, of aggravated culpable homicide, necessitating the present reference, and a recommendatory sentence of fourteen years' imprisonment with labor in irons and banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The evidence is sufficient to connect the prisoner with the death of the deceased by maltreatment, apparently on account of theft of his *dohur* or cloth. We concur with the sessions judge, and sentence the prisoner as proposed.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT AND RAJNARAIN CHATTERJEE

versus

RAMCHURN RISHEE (No. 16,) OODHUB RISHEE (No. 17,) AND BANCHARAM RISHEE (No. 21.)

Beerbhoom.

1856.

August 25.

Case of RAMCHURN RISHEE and others.

Sentence of the sessions court confirmed as to two prisoners found guilty of dacoity. Third prisoner found guilty of having in possession part of the property plundered acquitted, as the evidence as to identification of such property was not considered satisfactory.

CRIME CHARGED.—1st count, dacoity in the house of Dwarkanath Mookerjee, uncle of Rajnarain Chatterjea, plaintiff, and plundering therefrom cash and goods, property to the value of Rs. 1,983-10; 2nd count, having in their possession property, knowing it to have been acquired by the above dacoity.

CRIME ESTABLISHED.—Nos. 16 and 17, dacoity; No. 21, having in his possession property acquired by dacoity.

Committing Officer.—Baboo Koomar Hurrendra Krishna, deputy magistrate of Soory.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 10th May, 1856.

Remarks by the sessions judge.—On the 2nd Maugh corresponding with 14th January, 1856, a dacoity took place in the house of Dwarkanath Mookerjea, uncle to the plaintiff, and property to the amount of Rs. 1,983-10, was carried off.

The plaintiff was asleep at the time, but was awakened by ten or twelve men, armed with *lattees*, and their heads bound up, forcibly entering his house; seeing them at the door, the inmates, including the women, slipped out unperceived, and of course recognized no one; plaintiff called up the chowkeedar and went to arouse the neighbours, but through fear no one went near the place, till the business was over.

Intelligence was sent to the police, who came the next day, but beyond the proof that there had been a dacoity, nothing could be discovered, though several houses were searched at the suggestion of the plaintiff.

Witnesses Nos. 1, 2, 3 and 4.

About a week after the occurrence, the darogah of a neighbouring thannah in the district of Moorshedabad received information, that some of the defendants were living in a style unwarranted by their position in life; he sent for the plaintiff and made enquiries, which ended in their arrest, and the recovery of a small part of the property.

Witness No. 21.

Nos. 16 and 17, confessed in the mofussil and before the magistrate, in both they implicated each other, and defendants

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Nos. 18 and 19, with others not brought to trial; these confessions are corroborated by the fact of property, about which there is no doubt, being found concealed in their premises. Before me they both made the same defence that the property had been placed with them by the police, and that the darogah had persuaded them by on offer of 50 Rupees to say what they did; the evidence for the prosecution shows, however, that they confessed at the time the property was found before they were taken to the thannah and their own witnesses could say nothing in their favor. I have found these two men guilty of dacoity and sentenced them to seven years each with labor in irons.

Witnesses Nos. 6 and 7.

No. 21, is a man that has, according to all the witnesses, borne a very high character, but living in the same compound as prisoner No. 17; property Nos. 1 and 2 was found in his house. No. 2, are Rupees which cannot be identified. No. 1, is a rather peculiar *saree;* it was positively sworn to by the witnesses for the prosecution, and the Dhobee who washed it shewed his mark; it was again positively sworn to by the evidence for the defence, and the defendant's Dhobee's mark shown; it was found with other clothes not in any way concealed. I was very doubtful whether to convict or not; it struck me to compare the Dhobee's marks with the clothes at present in use by both plaintiff and defendant; I found the mark sworn to by the prosecutor agreed exactly with those on the clothes that he had in wear on two successive days, and also with those that were undeniably a part of the plundered property, whereas the defendant though he allowed that his clothes had not been washed since he was under trial, could shew no corresponding mark; defendant's mark also was in an unusual place and there were certain discrepancies in the evidence against this man, being more favorable before me than before the deputy magistrate, that gives the impression that some one on his part had tampered with it; under these circumstances, I convict him of having possession of plundered property and have sentenced to five years' imprisonment with labor in irons.

Witness No. 27, &c.

I thought of making over witnesses Nos. 13, 14 and 15, for trial for perjury, but with reference to Circular Order of Nizamut Adawlut No. 34, dated 4th March, 1850, thought it better not to do so, considering, that I was new in the district, and the impression might be spread that I was unwilling to hear any thing in favor of a prisoner.

The conduct of the police calls for no particular remark, but though I would not absolutely prohibit them, it would, I think, be much more satisfactory to the sessions judges, if the mofussil confessions were somewhat discouraged, as I am convinced, though in some cases they may lead to detection of crime, that

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in many instances innocent persons are subjected to much ill-treatment to produce them.

I have ordered a reward of 20 Rupees to the informer.

The property, with the exception of No. 2 to be given to the plaintiff.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) We are not satisfied with the evidence against the prisoner No. 21, the other two prisoners have been convicted by the sessions judge chiefly on grounds of their own confessions and as these were made regularly before the magistrate, as respects them, we think the sessions judge's orders may properly be confirmed. Neither of these prisoners in his confession mentions prisoner No. 21, Bancharam, as having been concerned in the dacoity. It is mentioned in the confession of Goolam Rishee, prisoner No. 13, before the police, who has been released and who resides along with this prisoner, against whom the only evidence is the discovery in his house of a cloth identified by the prosecutor as his, but which is also sworn to by numerous witnesses as the property of the prisoner. We think the correct identification of it by prosecutor is questionable, and we release the prisoner No. 21, and confirm the sessions judge's order as to the other two.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

RADHOO MYTEE.

Midnapore.

1856.

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Case of RADHOO MYTEE.

Prisoner convicted of belonging to a gang of dacoits sentenced to transportation for life.

CRIME CHARGED.—1st count, dacoity in the house of Bissumber Shee uncle of Bindabun Shee of thannah Pertabpore; 2nd count, burglary in the house of Bholanath Jana (deceased) of thannah Pertabpore; 3rd count, dacoity in the house of Ruggoo Mundul of thannah Pertabpore; 4th count, dacoity in the house of Purkhit Hajra of thannah Kulmijole; 5th count, with being by profession a dacoit and having belonged to a gang of dacoits under Sirdars Moocheeram Kharah, Persaud Kharah and Soondur Kamar (convicts.)

Committed by Captain C. H. Keighly, assistant general superintendent and joint-magistrate.

Tried before Mr. G. P. Leycester, officiating sessions judge of zillah Midnapore, on the 16th June, 1856.

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Remarks by the officiating sessions judge.—The prisoner pleads *not guilty*, but has no defence to urge. He is a convict in the jail under sentence of five years' imprisonment for burglary. Five approver witnesses swear to his identity, of which there is no doubt, and they denounce him as being engaged with them in the commission of the respective dacoities charged against him.

In corroboration of evidence of the approvers the original* records of the three dacoities and the burglary in Bholanath Jana's house have been laid before the court. The record of case No. 372, shows a dacoity to have been committed in the house of Bindabun Shee, Koochil Jana, the approver witness No. 2, of the trial was arrested on the confession of Nundocoomar, but released by the police, and he and witness No. 1, denounce the prisoner as having been their associate in that crime.

* *Nuthee* No. 372, dacoity in the house of Bindabun Shee (plaintiff.)
Nuthee No. 440, burglary in the house of Bholanath Jana, master of Mooktaram Dugro (plaintiff.)
Nuthee No. 27, dacoity in the house of Ruggoo Mundul (plaintiff.)
Nuthee No. 31, dacoity in the house of Purkhit Hajra.

The record of the 2nd crime, case No. 440, charged against the prisoner shows that it occurred on the 29th September, 1851. On enquiry being instituted one Dhunnoo Pater, the brother of the village chowkeedar, reported that Radhoo Mytee the prisoner was absent from his house in the night of the occurrence, the mohurrir of the thannah apprehended him, and on the 3rd October, he excused himself by saying he had gone to see a sick sister. He was then discharged. The darogah, however, again arrested him, apparently on an anonymous petition and he confessed the crime on the 13th November, 1851, implicating Mudhoo Leckee witness No. 3, of this trial, and one Nobeen Mytee; both these men were apprehended, admitted their crime, and named Radhoo Mytee in their confessions before the police, taken on the 13th and 19th November, 1851.

The record of the case No. 27, shows that a dacoity was committed on the night of the 5th July, 1853, in the house of Ruggoo Mundul of Toolia in purgunnah Kasheejoorah. In this case one Munsaram Dass was first arrested and on 8th July, 1853, confessed, naming Radhoo Mytee as one of his accomplices. The prisoner Radhoo Mytee was seized and confessed on the 16th of that month. Five other men Soondur Kamar, Sadhoo Podica, Mudhoo Sawunt son of Jurroo, Mudhoo Dundopat, and Chundee Panjah also severally confessed on the 9th and 10th idem, each of them names Radhoo Mytee the prisoner as one of the gangs.

The record of the case No. 31, shows a dacoity was committed in the house of Mudhoo Hajra on the 28th February, 1854, but what relationship he bears to Purkhit Hajra is not apparent.

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The village mentioned as Doodhkoomar by the approver witness No. 4, and the time (about two and half years ago) of the occurrence as indicated by him, leave no doubt that this is the dacoity to which reference is made. No prisoners, however, were seized in this case as the owner stated that the dacoity had not been carried out to completion.

The evidence of the approvers having been thus fully corroborated by the records submitted, there is no reason for distrusting their evidence. That evidence leaves no doubt of the prisoner, Radhoo M--tee, having belonged to a gang of dacoits, of which offence I convict him, and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S Torrens.) The depositions of the five witnesses, approvers, mention very circumstantially numerous dacoities, in which the prisoner was concerned in company with them, and to his l. .ving been long associated with them in their gangs. This testimony is supported by two different confessions which the prisoner himself made before the police in 1851, and in 1853; in which he named two of the present witnesses as having been engaged with him; but for which dacoities, there was no proof against him, except their police confessions. Taking them now along with the detailed circumstances of the dacoities deposed to by the witnesses, we consider them strong corroboration of their testimony, and we accordingly agree in the conviction of the prisoner, and sentence him as recommended by the sessions judge.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND
J. S. TORRENS, Esq., *Officiating Judge*.

HURRISH SHEIKH AND GOVERNMENT
versus
TARACHAND SHEIKH.

Nuddea.

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Case of TARA CHAND SHEIKH.

Orders of sessions judge confirmed whereby he sentenced a prisoner on, a charge of man-slaughter to seven years' imprisonment in labor and irons, for violent assault which resulted in death of deceased. Attention drawn to Sec. 15, Act II. of 1855.

CRIME CHARGED.—1st count, against prisoner No. 3, wilful murder of Jhetnee Moosulmaney.

CRIME ESTABLISHED.—Man-slaughter of Jhetnee Moosulmaney.

Committed by Baboo Issurchunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. R. M. Skinner, officiating sessions judge of zillah Nuddea, on the 26th February, 1856.

Remarks by the officiating sessions judge.—The death of Jhetnee Moosulmaney having been reported at the thannah of Santipore by the acting chowkeedar of Balooka, on 22nd December, the mohurir repaired to the spot, sent the corpse into the station, and took the deposition of the daughter witness, No. 17, of the deceased, a little girl of eight or nine years of age, (without oath) and thus discovered that, the previous evening, the prisoner had detected, witness No. 11, Meahjaun conversing with her mother, at which he became angry. That night the little girl, waking from sleep, saw the prisoner pour water on the head of her mother, who was lying dead on the floor, and run away. Hearing her cries, her uncle (the prosecutor), her grandmother, witness No. 13, and others* came in and found an armlet belonging to the prisoner in the clothes of the corpse. These persons were examined by the mohurrir and the prisoner was arrested. He confessed to the darogah on 23rd idem, and to the deputy magistrate on 24th idem, that he had for the last five years had an intrigue with the deceased, but seeing her conversing with witness No. 11, Meahjaun, his anger was roused; Meahjaun ran away, prisoner therefore seized the deceased by the hair and struck her with his fist on the left side, which caused her death.

* No. 12, Sohagee Moosulmaney.
„ 16. Sodar Sheikh.
„ 14, Dookhee Sheikh.

The fact that death was caused by some blows which broke three ribs of the deceased is corroborated by the evidence of the civil assistant surgeon.

At the sessions the prisoner pretends to have been in a field that night. But his witnesses give contradictory evidence as to the distance of the field from the scene of the occurrence, but

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none of them state that it was far from the plaintiff's house.

The law officer gives a verdict of *Kutl Shibeh Umd;* concurring in this verdict I convict the prisoner, Tarachand Sheikh of man-slaughter and sentence him to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The confession of the prisoner inculpates him fully to the extent of his conviction by the sessions court. He admits that he knocked down the deceased, owing to his rage at seeing her conversing with a person whom he supposed his rival. There is every reason to believe, from the fact of three of the ribs of the deceased having been broken, that the attack was of a much more violent nature than what is disclosed by the confession; but in the absence of any further proof than what is afforded by the confession, and as the doctor states in his evidence that death might have resulted from the ribs having been broken from the fall, we think the finding of the sessions court is correct. Under any circumstance of the case, we see no reason to interfere in the appeal and confirm the orders passed.

We observe with reference to the judge's having abstained from taking the evidence of witness No. 17, a girl eight or nine years of age, on oath, that he has overlooked the provisions of Section 15, Act II. of 1855.

PRESENT:

B. J. COLVIN, Esq., *Judge*, AND
J. S. TORRENS, Esq., *Officiating Judge*.

GOVERNMENT

versus

NAIK AHEER (No. 6,) RAMADHEER SINGH* (No. 7,) RUTOO KOIREE (No. 8,) KOLIKA PANDEY (No. 9,) AND RUKTOO SINGH (No. 10.)

Shahabad.

1856.

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Case of NAIK AHEER and others.

Prisoners convicted of affray with homicide, sentenced severally to twelve & seven years' imprisonment with labor in irons, the principal in banishment.

CRIME CHARGED.—Affray attended with wilful murder of Chumun Koiree on the one side and Bhikaree Singh on the other, side and wounding Naik Aheer on the one side and Ruktoo Singh, Rutoo Koiree, and Kalika Pandey on the other.

Committing Officer.—Mr. J. Combe, joint-magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge, on the 11th June, 1856.

Remarks by the officiating sessions judge.—This is a very serious case of affray between two parties, in which two persons have been killed, one on each side, and several others wounded; the immediate cause of it is, however, far from being satisfactorily established, and it is impossible to decide with any degree of certainty, from the investigation that has been made and the evidence brought forward, as to the real facts of the case. It appears, however, that between the two parties a bad feeling has existed, the reasons for which are said to be the following. Ruktoo Singh of mouzah Buruaon (the prisoner No. 10,) holds a decree for Rs. 10,357, against Bhowaneebur Singh, Teeluk Singh, Chutterlall Singh, Peerthee Singh, Ramoodin Singh, (the prisoner No 7,) and others who are the maliks of mouzah Ain, having bought it from Pudarut Singh and others, decreeholders and maliks of mouzah Ichree, which decree is in the course of execution. This is one cause, and the other is, that mouzah Roosumbha, the property of Ramoodin Singh, (the prisoner No. 7,) and others was formerly leased out to Tebun Sab of mouzah Ain, during which time the men of Buruaon cultivated lands in it; on the expiration of the lease Ramoodin Singh, (the prisoner No. 7,) took the management of it into his own hands, and demanded an increase of rent from the Buruaon people, and on their objecting to pay more, he settled the lands which they used to cultivate, with the Aheers of Resumbha. Thus much is gathered from the evidence of the witnesses for either side and the darogah's final report.

On the evening of the 13th March, corresponding with the

* Released by the sessions judge.

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22nd Falgoon, Naik Aheer of Rosumbha (the prisoner No. 6,) came to the Beelounthee police station with the body of Chummun Koiree of Tolaata appertaining to mouzah Ain, which is about five *coss* distant from the thannah and stated, that on that day about 3 o'clock in the afternoon Ruktoo Singh (the prisoner No. 10,) and Chintamun Singh, maliks of Buruaon commenced driving two hundred buffaloes into a grain-field which was cultivated by him and Chummun Koiree, and on their preventing this, Chintamun Singh wounded him with an iron spear and Ruktoo Singh (prisoner No. 10,) wounded Chummun with a similar weapon, from the effect of which he died on the field. On the same night, at a later hour, Dookhea Singh of Buruaon came to the thannah with the body of his nephew Bheekaree Singh and stated, that on his return home in the evening from mouzah Ichree, he found Bheekaree Singh lying senseless and was told by Bheenuk Ruchia and Roocha Koiree, inhabitants of Doolarpore and Kesho Oopadhia of B. ruaon and others, that Ruktoo Singh (prisoner No. 10) and Chintamun Singh had gone with Bheekaree Singh to Koosumba, to search for a bundle of barley and grain belonging to a Koiree which had been stolen, and that they had found it; that on Ruktoo Singh and Chintamun's saying to Ramodin Singh (prisoner No. 7,) Sheopershun Singh, Kooldeep Singh, Chukouree Singh, Kishundial Singh, Jainath Singh, Kulupnauth Singh, Oograh Singh, and others, inhabitants of mouzah Ain, who were collected to the number of 400, "Why have the Aheers of your village stolen this," they, viz. the men of Ain commenced an attack with sticks, swords and spears, during which Bheekaree was wounded on the head by Ramodin Singh, (prisoner No. 7,) on the finger by Sheopurshun Singh, who cut him with a sword, and by Ablakh Singh and others with *lattees*, from the effects of which he died that night; in addition to which a Brahmin, who was coming to Ruktoo Singh, got wounded on the head, and Chintamun and Sungut Singh, both of Buruaon, were wounded on the back and foot with a *tulwar*. On the following morning the 14th of March, Reetun Koiree of Ramnagor appertaining to Burnan (prisoner No. 8,) came wounded to the thannah, and stated that on the preceding evening, Ruktoo Singh (prisoner No. 10) Chintamun Singh and Bhikaree Singh, came to the boundary of Koosumba; that information about some grain belonging to Hurruk Koiree having been stolen was sent to mouzah Ain with a request that it should be returned; and that he was wounded on the right hand by Ramodin Singh (prisoner No. 7,) with a *tulwar*. Such were the accounts given on the day and the morning after the occurrence, by two of the wounded persons and the uncle of one of those who was killed.

The scene of the affray appears from the plan sent in to have been between Pursotumpore and Koosumbha, distant a little above one *coss* from Ain and a quarter of a *coss* from Buruaon.

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To prove the charge on which the defendants have been committed, nineteen eye-witnesses have been sent in, of whom only three, viz. Nos. 3, 18 and 19, can be said to be disinterested of the others, nine are connected with Ichree and Buruaon and seven with Ain and Koosumbha; the account given more or less by Nos. 1, 2, 3, 4, 12, 13, 14, 15, 16 and 17, is that about four or five hundred men of Ain came to Tala Pursotumpore and commenced plundering the Khulian of Reetun Koiree (prisoner No. 8), (some say of Hurrial Koiree) also of the grain lying there, and on Reetun Koirie's calling out, Goorbux Singh and Buruanbux Singh, gave orders for him to be struck: whereupon Ramodin Singh (prisoner No. 7,) wounded Reetun Koiree on the back with a sword; and on Bheekaree Singh (deceased) coming up and calling out, the same two persons again gave orders, on which Chummun Koiree deceased attacked him with a *lattee*, but was struck by Bheekaree with a spear, and the latter was then wounded by Ramodin Singh (prisoner No. 7,) and Sheopershun Singh with swords, and by several others (whose names they mention) with *lattees* and *tulwars*; in this affair Naik Aheer was accidentally wounded by a spear, which was thrown at Bheekaree Singh, and the prisoner No. 9, was also wounded; the substance therefore of the evidence of these persons who, with the exception of No. 3, are all in the interest of the Buruaon maliks is that Chummun Koiree was killed by Bheekaree, who was in return first wounded by Ramodin Singh (prisoner No. 7,) and afterwards by the rest of the Ain people, from the effects of which injuries he died; that Reetun Koiree (prisoner No. 8.) was wounded by prisoner No. 7, that Naik Aheer (prisoner No. 6,) was accidentally wounded by one of his own party, and that prisoner No. 9, who was merely passing by at the time and who exclaimed against what was going on, was wounded by the Ain people; the evidence of Nos. 18 and 19, which is in support of this, is conflicting and unsatisfactory in the extreme. On the other hand the account given more or less by Nos. 5, 6, 7, 8, 9, 10 and 11, is, that Ruktoo Singh (prisoner No. 10,) Chintamun Singh and others of the Burwar maliks and men to the number of one hundred and fifty persons drove in one hundred and fifty buffaloes to graze in the field of Chummun (deceased) and Naik Aheer (prisoner No. 6,) which is in mouzah Kooshumbha and on their proceeding to turn out the buffaloes, Bheekaree (deceased) came up with a sword threatening to strike Chummun, who then struck Bheekaree on the head with a *gurasa*, which knocked him down, whereupon Ruktoo Singh (prisoner No. 10,) wounded Chummun on the left side of the chest with a spear; the substance of this evidence is therefore that Chummun deceased killed Bheekaree, and was in return killed by Ruktoo Singh. The evidence of Dr. Hall shows that Chummun Koiree had two punctured wounds in the chest, one of which on the left side

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was the cause of death; that Bheekaree Singh had received several severe wounds and contusions, one of which had completely severed the fore finger, and that his death was caused by a compound fracture of the skull, which he considers to have been inflicted by a blow from a blunt instrument. That Reetun Koiree had received a very severe wound, extending from the point of the shoulder to the inferior angle of the shoulder-blade, of the depth of two inches. That Naik Aheer had sustained a punctured wound in the back and general contusions, and that Kaleeka Pandey had received a contused wound on the head and a contusion on the right side.

The answers of the prisoners are as follows:

Naik Aheer, prisoner No. 6, gives the same story as to the cattle being driven into his field, Chummun Koiree being wounded by Ruktoo and himself by Chintamun, but names no witnesses.

Ramodin Singh prisoner No. 7, denies being concerned in the affray, stating that he was on the day that it happened in mouzah Ain half a *coss* off, and that as there is a dispute between the Koosumbha and Buruaon people and as he is the malik of the first mentioned village, he has been accused. Kalika Pandey prisoner No. 9, says he was on his way from Arrah to Muthapore where he saw four or five hundred men collected and making a disturbance; that he went up to remonstrate and got wounded by Hurkishen and Ganesh; has no witnesses.

Reetun Koiree, prisoner No. 8, says he was cutting crops in Ram Nagur Tola, when, hearing a disturbance, he went and saw the people of his village running away and on going to his house and finding his family doing the same, he told them to stop, he then went and saw four or five hundred men of Ain and Koosumbha armed, and on his calling out and hearing Pirtee Singh and Ablak Singh saying, "*maro*" he fled, and was wounded by prisoner No. 7, has no witnesses.

Ruktoo, prisoner No. 10, denies being concerned in the affray, stating that on the day when it occurred he was in Arrah and at 11 o'clock in the forenoon he went to the cutcherry of Mr. O'Loughlin at Dundhea, which is on the bank of Soan four *coss* east of Arrah, where he remained till about 4 P. M.; that he there wrote an agreement for supplying *kunkur* to Mr. O'Loughlin and received a *purwana* signed by him; about 8 o'clock at night he returned to Arrah and having been told by Ruttun Singh that Dhuna or khidmutgar of Chintamun Singh who had accompanied him (the prisoner) had run off with some things belonging to them, he went with Juddoo Chowkeedar and gave information to the jemadar of Moula Bag in which part of Arrah they were stopping; that he was told to come the following day with a descriptive roll of the khidmutgar. On the following morning he went with Ruttun Singh and Juddoo

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Chowkeedar again to the jemadar and gave in a list of the property that had been carried off and a written statement; at 10 A. M. he went to the judge's office and gave a vakalutnamah, and in the evening he arrived at his own house and heard of a fight having occurred between the men of Koosumbha, Ain and Pursotumpore. On the next morning he came back to Arrah and heard that he had been accused by the people of Ain out of malice, in consequence of the decree which he had bought; he remained in Arrah during the next two days to look after the case and then went to the police thannadar at Buraon; he states the cause of his being accused is the fact of his having become by purchase the holder of the decree gained by Pudaruth Singh against the Ain maliks and on his putting it into execution, Teeluk and Bhuwaneebux Singh maliks of Ain brought forward certain objections that Ramoodin Singh (prisoner No. 7,) is a Shikmee partner of Teeluk and that Sheopershad Singh (acquitted by the joint-magistrate) is a son of Bhuwaneebux Singh; that these two have several times asked him to take the principal of the decree and give up all claim to the interest thereon and the costs, otherwise they would serve him in the same way as they had served the people of Ichree; he, however, declined and afterwards got an order for the execution of the decree from the principal sudder ameen's court, whereupon they appealed and the case is now pending before the judge. He concludes his defence by adding that he, Chintamun, and Dhurmoo the khidmutgar arrived in Arrah on the 20th of Falgoon, was in the cutcherry on the 21st, at the magistrate's office and Mr. O'Loughlin's cutcherry on the 22nd, and in the judge's court on the 23rd, mentioning several witnesses to prove his story.

Ramoodin's *alibi* is supported by his three witnesses and that of Ruktoo by the following persons.

No. 35, A *modee* in whose house he remained whilst at Arrah from the 20th to the 23rd Falgoon.

Nos. 36, 37, 38, 39 and 44, mokhtars of the foujdary court at Arrah of whom three say that it was about 13th of March, viz. 22nd Falgoon between 10 and 11 A. M. that they saw him at the foujdary and two mention positively his being there on that day.

No. 52, Mr. O'Loughlin and three of his servants Nos. 41, 42 and 43, who swear to his being at Dhundheeha on the date mentioned in the purwana bearing Mr. O'Loughlin's signature which is the 13th of March.

Nos. 47 and 48, two chowkeedars of Moulabag in the town of Arrah, who support his statement as to his giving information to the police jemadar about the flight of the khidmutgar.

Nos. 50 and 51, two men of Oodmuntnagor, who met him on the day of the affray returning from Dhundheeha.

No. 40, Ruttun Singh of Buruaon who, on the 20th Falgoon

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wrote from Arrah a letter to the prisoner Ruktoo and Chintamun to come into the station to look after their case, who deposed to their arriving at the station on that evening, to their remaining all the next day, to their going on the day after to the foujdary, to their going to and returning from Dhundheeha, to the prisoner's giving information to the jemadar about the khidmutgar having run off, on that evening and the following morning.

No. 45, who saw him at 11 A. M on the 22nd Falgoon at the foujdary and to meeting him again in Arrah on the evening of that day.

No. 46, khidmutgar of No. 45, who saw him in Arrah on the evening of 22nd Falgoon.

No. 49, who deposes to the information given to the jemadar and who supports the whole of the defence.

The case has been tried with the assistance of a jury of three persons, two of whom convict the prisoners Nos. 6, 8, 9 and 10 whilst the other convicts .ll five.

The whole of the evidence in this case is unsatisfactory, being completely one-sided, each set of witnesses supporting the statement of their respective parties, no weapons have been found in the houses of any of those whose dwellings were searched, and two totally different versions of the affair have been given. That there was a very serious affray by two parties admits of little doubt, and that there exists a considerable degree of bad feeling between the people of Buruaon on the one side and those of Ain and Koosumbha on the other is equally clear, and this latter circumstance may easily account for the chief persons in those mouzahs being named as the principal actors in the affair, whether they were so or not, but as the scene of this occurrence appears from the plan sent to have been between Koosumbha and Pursotumpore (which latter place appertains to Buruaon) at a distance of more than two miles from mouzah Ain, and adverting to the very natural cause of enmity entertained by the Buruao people at no longer being permitted to cultivate the Koosumbha lands, and to the fact of none of the Ain people with the exception of Chummun deceased in whose field in Koosumbha the occurrence is said to have commenced, having been wounded, I am inclined to put more faith in the account given by those of the latter mouzah as to the affray having originated in consequence of cattle being driven on to their field; and under this view of the case it does not appear to me likely that the men of Ain, which is distant more than two miles from the spot, should have been present when it occurred.

The next point for consideration is, whether any or all of the prisoners were concerned in it or not.

The answer of prisoner No. 6, the evidence of witnesses Nos. 1, 2, 3 and 4, on the one side and Nos. 5, 6, 7, 8, 9, 10 and 11, on the other, and the fact of his being wounded show that he was

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in the affray; and that he took an active part in it, may be presumed from the evidence of Nos. 3, 4, 5, 6, 8 and 11, who mention there being a *lattee* in his hand. Against prisoner No. 7, there is the evidence of witnesses Nos. 1, 2, 3, 4, 12, 13, 14, 15, 16, 17, 18 and 19, (by the two latter he is not named but only recognized in this court) who all speak to his having been the principal actor in the affair. These are all, with the exception of No. 3, whose evidence was not taken by the police till eleven days after the occurrence, and Nos. 18 and 19, whose evidence is contradictory, clearly shown to be in the interest of the Burnao party whose version of the affair I do not credit; that there is sufficient reason for his being named by them out of enmity may be fairly presumed by the fact of his having intervened in several Act IV. cases decided at the close of 1854, in favor of the Koosumbha people against those of Burnao in which he supported the former. Witness No. 1, in answer to a question in this court, states that between himself and the maliks of Ain, and especially this prisoner, enmity exists and cases are pending; it is a matter of surprise that if this man had been so actively engaged in the affray as he is said to have been, that he and those who are said to have been with him should have escaped without receiving the slightest hurt. His defence is simple and contrasts strongly with the elaborately got up one of the prisoner No. 10. Under these circumstances considering the evidence as not sufficiently trustworthy for conviction I acquit him.

Prisoner No. 8, is mentioned by witnesses Nos. 1, 2, 3, 4, 12, 13, 14, 15, 16 and 17, as being cut down in the affray, though empty-handed and not concerned in it. In his statement at the thannah and answer before this court he makes no mention as to his grain being plundered from the "khullean," and it is not likely that had he not gone up and taken an active part in the affray he would have been so severely wounded.

Prisoner No. 9, is mentioned by witnesses Nos. 1, 2, 3, 4, 12, 15, 18 and 19, as being wounded in the affray; he states that on seeing the disturbance, he went up and remonstrated; he is said by witnesses Nos. 7 and 9, to be a servant of prisoner No. 10, who is shown by several documents filed on the part of the prisoner No. 7, to be concerned with Muthrapore, to which place, this prisoner says, he was going. Although said to be empty-handed his being wounded is fair presumption under the circumstances that he was a participator in the fight. Against prisoner No. 10, there is the evidence of the witnesses Nos. 5, 6, 7, 8, 9, 10 and 11, who all mention him as the person from whom Chummun Koiree received the wound which caused his death; he was named by Naik Aheer the prisoner No. 6, on the evening of the day on which the affray took place, also by Dookhee Singh witness No. 30, on the same evening, and by Reetoo Koiree the prisoner No. 8, on the following morning, as

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having gone with Chintamun and Bheekaree, the other man who was killed, to the borders of Koosumbha on the previous day. Dookhee Singh, on his evidence in the foujdary, repeats the name of this prisoner and though he did not do so at first in this court, on being cross-examined he did mention him; his evidence is merely hearsay, and he states that between himself and the prisoner and Chintamun Singh there is enmity in consequence of his having been bound down eight years ago to keep the peace; but putting aside this man's evidence there is still the mofussil statement of the prisoner No. 8, who is on the side of the prisoner and who is not accused of mentioning his name from similar motives; the whole of his defence is so elaborately got up, that I consider it open to the strongest suspicion and as telling against him; the fact of several events occurring so fortunately for him on that very day cannot be looked upon as otherwise than most strong and singular. That on that very day he should have been seen at the magistrate's cutcherry on the morning, at a place eight miles off in the afternoon, again in Arrah in the evening and then that it should so happen that the servant of his companion Chintamun should run off with his property on that same day, thereby enabling him to give a further proof in support of his *alibi*, by showing that he gave information about this to the police on the same night is a train of circumstances singularly lucky for him, if such could be credited. As to the evidence in support of all this defence, it is not entitled to implicit credit; two of the mokhtars have at times been engaged on his part in cases in the courts. Three of them do not positively say that it was the 13th of March, when they saw him at the magistrate's cutcherry and though the 13th is the date in the *purwannah* obtained from Mr. O'Loughlin, there could be no great difficulty in the prisoner's getting that or any other date written on it. Of the two witnesses who mention having seen him on his way back from Dhundheea on that day, one states that he had never known him before that day. Witness No. 40, is a partner with the prisoner in the purchase of the decree gained by the Ichree Maliks against the Ain Maliks and witness No. 49, is a part-proprietor of Muthrapore of which the prisoner is a zurpesheedar, consequently these two cannot be said to be otherwise than in his interest; then there is the singular fact of his having received a wound on the shoulder-blade. The darogah described it in his report of the 19th of March, as being about a hand's breadth; the prisoner accounted for it by saying it had been caused by his accidentally striking himself against a bamboo in the roof of a house. Unfortunately he does not appear to have been subjected by the magistrate to an examination by the surgeon, who might have been able to have shown how the wound had been caused; there is only a slight mark, and judging from its appearance it could

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not have been a wound of any great depth or extent and it is not impossible that it may have been caused in the way he describes, if so, it is a most singular circumstance that it should have happened at the very time when he is accused of being concerned in the affray; there is one other point which throws discredit on his defence and that is with regard to Chintamun who is said to have been his companion when in Arrah and Dhundheea and who, although warrants for his apprehension have been issued and a reward offered, has not yet appeared. Considering therefore, under all the circumstances, that it is sufficiently proved that prisoners Nos. 10, 6, 8 and 9, were actively concerned in an affray attended with culpable homicide of Chummun Koiree and Bheekaree and wounding of Naik Aheer, Reetoo Koiree and Kalika Pandey, I recommend that prisoner No. 10, be sentenced to imprisonment for twelve years with hard labor in irons and prisoners Nos. 6, 8 and 9, to be imprisoned for seven years each with hard labor in irons.

The prisoner No. 7 is acquitted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) Prisoners Nos. 6, 8, 9 and 10, are before the Court. No. 10 has been defended by Moonshee Ameer Ally and Baboo Anodhapershad Banerjea. There can be no question of the occurrence of a most serious affray in which two persons were killed (the slayer of one having himself died of his wounds) and several people were wounded. The officiating sessions judge has carefully detailed the evidence for the prosecution, and the defence of the prisoners. It need not therefore be recapitulated here. It is manifest from the admissions of Nos. 6, 8 and 9, they were all present in what was evidently a premeditated affray, whatever may have been the real origin of it. No. 10, rests his defence upon an *alibi* which he tries to support by strong evidence. We concur with the officiating sessions judge in rejecting it. The main witnesses cannot swear to having seen this prisoner on the 13th March, but only about that date; Mr. O'Loughlin was unable to say that he saw him on the 13th, but judged it was on that date that he saw the prisoner at Dhandheea from the date of the pass. This witness cannot, however, read the vernacular, and it is very probable that the pass was dated for the occasion, although it is sworn to by the writer, witness No. 41, as having been delivered on the 13th March. We cannot, however, believe this witness against the evidence for the prosecution, which inculpates the prisoner, corroborated as it is by several circumstances. The prisoner was named at the thannah on first reporting the affray by both sides, viz. those who had a charge to prefer against him and those who had not. He was also admitted by prisoner No. 8, to have been there, as stated by the officiating sessions judge and No. 9, was his servant. As this person was otherwise

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unconnected with the parties, he is not likely to have been present, except in his master's company. It has been urged that witness No. 30, who reported at the thannah the presence of No. 10, was an enemy of his. This may be true; but as he was not accusing him on the occasion, but had gone to accuse the opposite side to remove the charge from No. 10, and his party, his evidence is quite trustworthy. Altogether we consider the evidence, inadvertently corroborated as it is, in favor of the presence of No. 10, to be truthful; while that which would establish his absence fails in our opinion to prove the fact, and the account which he gives of the mode of receiving his wound, which was inflicted on the same date, is wholly incredible. In concurrence therefore with the officiating sessions judge, we convict the prisoners of affray with culpable homicide and sentence them to imprisonment for the periods specified: No. 10, as the principal, in banishment. We observe that the officiating sessions judge should himself have passed sentence upon Nos. 6, 8 and 9, suspending execution of it according to Regulation IX. of 1831, Section 4, Clause 6, till receipt of the Court's orders.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

JUSOODANUND TEWAREE AND GOVERNMENT

versus

BUKHOORY TEWAREE (No. 2,) AND LUTCHMEE TEWAREE (No. 3.)

Shahabad.

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Case of BUKHORY TEWAREE and another.

Two prisoners convicted of child-stealing, the one sentenced to four years and the other as less guilty to two years in labor and irons. Orders of the sessions judge confirmed on appeal.

CRIME CHARGED.—1st count, theft of a female child with ornaments valued at Rs. 7-8; 2nd count, receiving and retaining a stolen child knowing such child to have been stolen; 3rd count, being an accomplice in the above theft; 4th count, being an accessary after the fact.

CRIME ESTABLISHED.—1st count, receiving and retaining a stolen child knowing such child to have been stolen; 2nd count, being an accessary after the fact.

Committed by Mr. F. B. Drummond, magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 2nd May, 1856.

Remarks by the officiating sessions judge.—On the morning of the 19th Maugh, 1263, corresponding with the 10th of February, 1856, a female child of the prosecutor Jussoodanund Tewaree of eleven months' old was in the arms of his servant Musst. Gungajully; he subsequently missed it and it was nowhere to be found. In the evening he learnt that Musst. Gungajully had been seen

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taking it away; information was given to the police; some days after this the prosecutor heard from witnesses Nos. 1 and 2, that they nad seen the prisoner with Musst. Gungajully and the wife of prisoner No. 2, going along with the child in the direction of Dinapoor. Subsequently the prosecutor met prisoner No. 2, who, on being asked for the child, promised to bring it back to him, on prosecutor's re-admitting him into his caste from which he had been turned out. Prosecutor after this discovered that prisoner No. 2, and others had taken the child to the house of a medical man at Dinapoor, whither he went and learnt that the prisoners, Musst. Gungajully and the wife of prisoner No. 2, had brought a child to that place, but of which he could find no trace; on returning home, and prisoner No. 3 being apprehended, prisoner No. 2 said, that if he would let his son off, he would bring him the child he had in his house. On its being discovered that the child was there, prisoner No. 2 was apprehended with it.

It is shown by the evidence of witnesses Nos. 1 and 2, that the prisoners were seen on or about the 21st Maugh with Musst. Gungajully and the wife of prisoner No. 2, and a child going along the road in an easterly direction, and on being questioned, they said they were going to Dinapoor; the evidence of witness No. 8, shows that Musst. Gungajully on the day that it was lost had given it over to the wife of prisoner No. 2. Witnesses Nos. 10, 11, 12 and 13, support the prosecutor's assertion as to prisoner No. 2 promising to give back the child on his being re-admitted into caste. Nos. 3, 4 and 5 prove the discovery of the child in the house of the prisoners, who are father and son.

In the magistrate's court the prisoner No. 2 denied having stolen the child, stating that Musst. Gungajully had taken it to Dinapoor, and that after searching he had got it back from that place; before me he says the same as to the searching for the child, which after a correspondence through a moonshee between himself and a medical man at Cawnpoor, was given back to him by the moonshee, whose name he does not know; the other prisoner merely makes a simple denial in both courts.

The *futwa* of the law-officer convicts them on the 2nd and 4th counts, in which I concur.

There is no doubt that the child, an infant of eleven months' old, was taken away by Musst. Gungajully and made over to the prisoner No. 2, and that from the 19th Maugh to the 13th Falgoon, a period of twenty-four days it was missing, that is to say, the plaintiff was deprived of it for that time; where it was during that time, is not satisfactorily shown in the course of the trial. I directed the magistrate to have special enquiries made through the cantonment joint-magistrate at Dinapoor, as to the truth of Musst. Gungajully's answer before the magistrate as to the child having been taken to the house of a medical man, who

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has been for some years absent without cantonment, but the result of the enquiry has proved nothing. I have had the evidence of Musst. Gungajully, who was acquitted by the late acting magistrate, taken, but her statement as to the child being in Dinapoor is not satisfactory; what was the object of the prisoner in keeping possession of the child is by no means clear. According to what the prosecutor says about the prisoner No. 2 agreeing to restore the child on being re-admitted into caste, it would appear that this act was committed out of revenge, but as the expulsion of the prisoner from the caste of the plaintiff who is his neighbour and relative occurred about ten years ago, it seems somewhat improbable that he should have allowed his feelings of revenge to slumber so long. At all events whatever may have been the motive of committing this crime, which must naturally have caused much distress and anxiety to the parents, whether for the purpose of sale or out of pure malice, it is clear that the child was taken away to their home, and that they held unlawful possession of it for a period of twenty-four days when it was discovered in their house. After consulting various precedents in case of child-stealing, I am of opinion that a sentence upheld by the Sudder Court vide page 337 of the Nizamut Adawlut Reports for 1854 meets this case nearer than any other that I can find; the punishment referred to was imprisonment for five years with labor in irons. I consider, under all the circumstances, that a sentence of imprisonment for four years on prisoner No. 2, and one of two years on prisoner No. 3, each with labor in irons, will be no more than sufficient, and I have therefore sentenced them accordingly.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The prisoners have been represented by Mr. Allan and Moonshee Ameer Ally.

The evidence is conflicting as to how the infant came into the hands of the wife of prisoner No. 2. Musst. Gungajully states that she gave it to her to hold, while she went for water, and one witness No. 8, deposes to the same effect; while prosecutor said at the thannah that Gungajully told him she had left it in the court-yard; but in the sessions court that she variously accounted for its being missing. It is immaterial, however, to settle this point. The guilt of the prisoners depends upon their having taken away the child with a furtive motive, and in so keeping it unlawfully and clandestinely from its parents. Of this fact, there can be no doubt upon the evidence. They were seen with it proceeding towards Dinapoor where it was found; and where, it appears from the evidence of Musst. Gungajully, that prisoner No. 2 afterwards was. Ultimately the child was delivered up by prisoners Nos. 2 and 3. Thus the chain of evidence connects them with its unlawful detention. This fact is fairly presumable; besides from the answer of prisoner No. 2,

in the sessions court, in which he admits indirectly his knowledge that the child was at Dinapoor. His statement that he took it to the thannah is contradicted by the evidence of witness No. 3, who deposed that he made the prisoners produce the child from their own house on report of its arrival there; and the prosecutor has moreover proved that it was only on the apprehension of prisoner No. 3, son of prisoner No. 2, that the latter conditioned to give the child, if the prosecutor would obtain his son's release. Any intention to return the child except upon this compulsion, does not appear. From a consideration of the above circumstance, we reject the appeal and decline to interfere with the officiating sessions judge's order.

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PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT

versus

NYAN DOSSEE (No. 1,) OOTHUM PULLEE (No. 2, APPELLANT,) KALEECHURN DOSS (No. 3, APPELLANT.)

Dinagepore. 1856. August 29. Case of OOTHUM PULLEE.

CRIME CHARGED.—1st count, counterfeiting coin; 2nd count, uttering counterfeit coin, knowing it to be such.

CRIME ESTABLISHED.—Counterfeiting coin.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 16th May, 1856.

Orders of the sessions confirmed, sentencing prisoners convicted of counterfeiting coin to seven years' imprisonment with labor and irons.

Remarks by the sessions judge.—The prisoners Nyan No. 1, and Oothum No. 2, were apprehended by the witnesses Meajan No. 1 and Bahabul No. 2. The object of Meajan appears to have been the hope of reward or employment in the police and "Bahabul" who apparently had previously assisted the prisoners in disposing of counterfeit coin had been induced to assist "Meajan." I believe that in a similar case, some years ago, some persons who gave information against and assisted in apprehending coiners, obtained police employment and that circumstance probably was the cause of the prisoners having been apprehended and kept in durance for some time before they were made over to the darogah. Counterfeit rupees were found on Oothum, prisoner No. 2, while in company with Nyan prisoner No. 1, while on their way to the house of "Bahabul" witness No. 2, who was to dispose of their rupees for them. Kalichurn prisoner No. 3, was apprehended with implements

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and materials, moulds excepted. They all confessed, made fresh moulds of clay and manufactured three clumsy rupees before the police jemadar. They all confessed in the foujdaree before the deputy magistrate. Before me, the prisoners pleaded ***not guilty***. Nyan, No. 1, and Oothum No. 2, urging that the witness Bahabul No. 2, invited them to his house to make ornaments, and offered the bad rupees which they rejected. "Nyan" adds that the three rupees and moulds were made by the police, as he could not manage it. Kaleechurn stated that he was beaten but that neither moulds nor rupees were made by or before him: that the implements found in his house belonged to his absconded son and that he was not acquainted with the other prisoners. The prisoners, however, did not name witnesses for their defence and were convicted by the *futwa* of the law officer in which I concurred.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens). We see no reason to interfere with the sentence passed upon the prisoners and reject their appeal. We observe that the recorded confessions of the prisoners instead of being placed on the record of the trial have been left with the magistrate's file, where we now find them. This is an irregularity of which the sessions judge will take notice.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND RAMDEEN SINGH

versus

MUSST. BALGOBINDEE (No. 14,) AND RAMKISSORE PANDEY (No. 15).

Patna.

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Case of BALGOBINDEE and another.

Orders of the sessions, sentencing prisoners to five years and three years' imprisonment with labor and irons on charges respectively of theft and receipt of stolen property, confirmed.

CRIME CHARGED.—(No. 14,) theft of jewels, &c. valued at Rs 514-4-3, belonging to the prosecutor in having clandestinely removed the same from his residence with the intent of appropriating them to herself, (No. 15.) being in possession of stolen property knowing the same to have been obtained by theft.

CRIME ESTABLISHED.—(No. 14), theft of property valued at Rs. 302-14-9, belonging to the prosecutor Ramdeen Singh, and (No. 15,) ditto as charged.

Committing Officer.—Capt. H. M. Nation, Cantonment joint-magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 24th January, 1856.

Remarks by the sessions judge.—Prisoners plead *not guilty.* Balgobindee has been living with prosecutor's brother Sheodeen Singh for some fifteen days as his mistress. Prosecutor and his brother lived together, there were several female relatives of theirs in the house. Sheodeen went away, leaving Balgobindee in the house. She remained there some four or five days after Sheodeen's departure and then decamped with all the jewels and female gear in the house. There had been a recent robbery in a neighbour's house, and prosecutor's family had, in consequence, buried all their silver and gold ornaments. Balgobindee being acquainted with the fact and place of concealment, she had dug these up and taking all the clothes from the *petarahs,* where also she knew they were kept, had gone off in the middle of the night. Prosecutor gave immediate notice at the thannah with list of property stolen, he then went to try and find some trace of the same; he first went to Balgobindee's village and there found that she had passed through with some bundles. He then again gave notice at the thannah, but, not satisfied with the darogah's proceedings, came at once to the magistrate. Balgobindee was traced to Ramkishwur Pandey's house and the property all discovered. It seems that she, after wandering about for some time, had taken refuge in Ramkishwur Pandey's house and given him the property to keep. When she demanded it again with a view of leaving the house he refused to give it up; witnesses Nos. 1, 2, 3 and 4. It was this quarrel between

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Balgobindee and Ramkishwur that betrayed them both to the police, Balgobindee in fact gave notice to the zemindar of the retention of her bundles by Ramkishwur. In the first instance Ramkishwur gave up a few trifles, saying he knew of nothing else. On Ramdeen's arrival and the police commencing to search the house at his demand Ramkishwur resisted, and his wife endeavoured to steal out with a part of the most valuable property concealed about her person, Ramkishwur himself having previously thrown some of the stolen property over a wall into his neighbour's yard. On the search being carried out, the rest of the lost things came to light hid about in different parts of Ramkishwur's house and *chopper*. Prosecutor and his witnesses fully identify the property, which indeed is of a description to be easily recognised (witnesses Nos. 5, 6, 7 and 8). Balgobindee prisoner claims all the property as her own, says she took it with her when she went to live with prosecutor's brother.

Ramkishwur prisoner says he is not at all the sort of man to commit the crime charged against him, that the case is entirely got up against him. Ramsahai (the malik or zemindar to whom Balgobindee applied on the retention of her property by Ramkishwur) is his enemy and has conspired against him to injure his character. The search in his house was made while he was detained a prisoner by the jemadar. Some few of the articles of clothing produced in court are his property.

Of the witnesses for the defence of Balgobindee, Nos. 10 and 11, state that when she left her home some *three years ago*, she had considerable property in her possession; No. 10, deposes to recognising a nose ring and a pair of bracelets (one of several pairs worn to by Gunput Sonar witness No. 8, as having been made by him expressly for the prosecutor) from among the property produced in court as formerly belonging to her. The other witnesses called by her know nothing of her or her circumstances.

The witnesses in favor of Ramkishwur depose to his respectibility as a man of substance, but know nothing further as to his innocence; in the present case some of them speak vaguely of a quarrel between him and Ramsahai in support of his defence, but the cause is differently assigned; I have no confidence in their assertions.

The law officer brings in a *futwa* against Musst. Balgobindee of fraudulently and clandestinely abstracting the property of prosecutor from his house, also against Ramkishwur of knowingly secreting the same, being equivalent to a finding of guilt on the counts severally charged against them in the calendar.

The evidence is fully convincing both as to the theft from prosecutor's house by prisoner Balgobindee, of the property produced in court to the value of 302 Rs. as also of such pro-

perty belonging to the prosecutor and his brother and not to Balgobindee, and to the fact of prisoner Ramkishwur having received and concealed the same in his house. There is also the strongest presumption that he was fully aware at the time of its having been acquired by theft or other dishonest means.

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I convict Musst. Balgobindee, prisoner No. 14, of calendar No. 5, of theft of property valued at Rs. 302-14-9, from the house of the prosecutor Ramdeen Singh and sentence her to five years' imprisonment with labor suited to her sex.

I convict Ramkishwur prisoner No. 15, of calendar No. 5, of being in possession of stolen property, knowing the same to have been obtained by theft, and sentence him to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and J. S. Torrens.) We see no reason to interfere with the conviction and sentence passed upon the prisoners, and reject their appeal.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

Hooghly.

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Case of BECHOO SHEIKH.

GOVERNMENT

versus

BECHOO SHEIKH.

Prisoner convicted of perjury in the sessions court acquitted on appeal, on the ground that the matter deposed to by him before the magistrate was not shewn to have been wilfully misrepresented.

CRIME CHARGED.—Perjury, in having on the 27th May, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Hooghly, that Roopchand Doolya was wounded *after Nobin Roy had ordered his men to assault;* and in having on the 28th May, 1856, on cross-examination before the same officiating magistrate, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath that Nobin Roy gave his orders *after Roopchand had presented himself* wounded before the prisoner; such statements being contradictory to each other on a point most material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. R. Cockerell officiating magistrate of Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 9th June, 1856.

Remarks by the additional sessions judge.—The prisoner is a police jemadar who, on the 19th May last, was stationed at the

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Case of BECHOO SHEIKH.

pharee of Bâghnân. On that day he received notice that there was likely to be a disturbance at a place called Juroor between the dependants of the zemindar Birjoraj Rai, with Nobin Rai the kurpurdaz at their head, and the ryots of the village. The notice was given him by Ram Chowkeedar, and prisoner on receiving it, proceeded to the place. On the 19th May, it was reported a collision had taken place in which one of the ryots had been wounded, but none of the zemindar's people; and on 23rd May, the magistrate on the prosecution of Government preferred a charge of m tual affray against both parties. On the 27th May, the prisoner, who professed to have been on the spot during the collision by *moonlight*, was examined in the matter, when he deposed on oath that the injury inflicted on the weaker party was in consequence of a direct order, he, prisoner, himself, heard given by the zemindar's manager and agent Nobin Roy. The following day, however, the 28th May, when again examined (also on oath) he very materially varied from this statement declaring the violence had preceded Nobin's order. It was evident he had been intermediately tampered with by the richer and more powerful party implicated.

In his defence both here and before the magistrate, the prisoner maintains that his first statement is in accordance with his written report, eight days previously, and that his answer on the 28th May, to the question put to him was made without sufficiently understanding the question.

This might have been the case had the prisoner merely answered "yes" or "no" to a lengthy question put to him, and the answer is recorded without the question, but on cross-examining the witnesses Nos. 3 and 4, they both distinctly declare the answer recorded was word by word that given by the prisoner. This being the case, there can be no mistake that when prisoner said on 28th May "Nobin Roy gave his orders *after* Roopchand had presented himself wounded in my presence," he knew what he was saying and meant to say what he did say. I, therefore, in concurrence with the law officer, convict him of wilful and corrupt perjury in a matter most material to the issue of the case (which is still under investigation) and I sentence him to 3 (three) years' imprisonment with labor but without irons.

Remarks by the Nizamut Adawlut—(Present: Messrs. J. H. Patton and J. S. Torrens.) We consider that the defence set up by the prisoner that, on the second day of his examination, he did not understand the questions put to him by the magistrate as to the priority of the orders given by Nobin, the prisoner in the case then under investigation, is exculpatory of the charge of wilful perjury. It is to be observed that the series of questions put to him referred to his conduct as a policeman in the prevention of the affray; and in the course of these, he was led

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into the contradictions, on the grounds of which the present charge has been preferred. There was no object apparent on his part to screen the prisoner, Nobin, inasmuch as he immediately admitted, on a question put to him, that what he had first deposed as to hearing the orders given by Nobin was true. On the whole then, we see no design to make a deliberate and wilful mis-statement on a point material to the issue of the case, and, from the manner in which the second examination was conducted, are led to believe that there was a misapprehension on the part of the prisoner as pleaded in defence. We accordingly acquit him, and direct his release.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND J. S. TORRENS, Esq., *Officiating Judge.*

GOVERNMENT AND SHEIKH NEEMOO

versus

JEENOO BIBEE.

Hooghly. 1856. August 30. Case of JEENOO BIBEE.

Capital sentence passed as proposed by the sessions court on a female prisoner convicted, in her own confession and other evidence, of the wilful murder of her step-son.

CRIME CHARGED.—Wilful murder of the prosecutor's son, Mether Chokrah, her step-son.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 10th June, 1856.

Remarks by the additional sessions judge.—On the evening of the 27th ultimo, the prosecutor left his home to go and fetch some "*butassa*" for his sick son, the deceased, a boy, ten or eleven years of age, who had been suffering for three or four days from an attack of cholera, but was nevertheless at the time not dying. The prisoner, the prosecutor's second wife and step-mother to the deceased, remained at home with the boy. The prosecutor bought what he wanted, and had got to the door of his house, when he saw by the light of a lamp his son wounded desperately on the throat and cheek, and dead, and blood flowing from the body. Immediately afterwards his wife, the prisoner, attempted to dart out of the house by the door, prosecutor was standing at, but the latter prevented and seized her, calling out for assistance. Witnesses Nos. 11, 12 and 13,* two of whom live close by, ran up, saw the corpse, and were told by the prosecutor, the deed had been done by the prisoner with a *kataree* or hatchet, (which has been produced), which the pri-

* Sheikh Harro.
Sonatun Sirdar.
Sheikh Sheraj.

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Case of JEENOO BIBEE.

soner herself confirmed, giving, however, no reason for the act. They add the husband and wife were on good terms, but that the latter and the deceased often quarrelled, the deceased complaining that his step-mother did not give him enough to eat.

The prisoner confessed the crime to the darogah, and again fully and freely to the magistrate.* Before me she again pleads guilty, and adds nothing more than that she hardly knew what she was about when she committed the act. She says she has no witnesses she wishes to cite. The medical testimony† in the lower court is most meagre and insufficient. No questions appear to have been put to the witness as to the previous state of disease. In this court Dr. Bray deposes, there were six very severe wounds on the hild's body, one of which alone, on the throat, would have been instantly fatal; that there is no doubt that the deceased died of these wounds, that the prisoner is and was sane, and that she is pregnant.

* Witness No. 7, Khettro Mohun Mookhopadhay.
,, ,, 8, Modhoo Soodun Adheekary.
,, ,, 9, Sheikh Sh-dhoo
10, Bissonath Mullick.

† ,, ,, 3, Dr. Bray.

The law officer declares the prisoner guilty and liable to punishment, after she is delivered of the child in her womb, by "*kissas*." I concur in this verdict; and seeing no grounds whatever for mitigation of punishment recommend that she be sentenced to death; being respited until either her child be born, or it is no longer possible in the course of nature that she should be so delivered.

The deputy magistrate's attention should be drawn to the terms of Section 14, Regulation XX. 1817. The witnesses to an inquest or *sooruthal*, should be able to "subscribe their names."

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. S. Torrens.) We agree with the sessions judge that sentence be recorded in this case on the prisoner in the manner proposed by him.

SUMMARY CASES.

PRESENT:

B. J. COLVIN, ESQ. *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SHAM MANJHEE SOOBAH (No. 9,) HAREE MANJHEE (No. 10,) AND CHUMPA MANJHEE (No. 11.)

Beerbhoom.

1856.

August 2.

Case of SHAM MANJHEE SOOBAH and others.

Case remanded to the sessions judge to pass his own orders on the conviction of the prisoners on a charge of rebellion. The sentences proposed being within his own competence under section vi. Act XXXVII. of 1855.

CRIME CHARGED.—Rebellion.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 19th April, 1856.

Remarks by the sessions judge.—On the 28th Assin, 1262, 13th October, 1855, the present defendants and others, eleven in number, and armed with swords, bows and arrows, &c., came from their own village and locating themselves in the house of one Manik Gurain at a place called Banskolee, proceeded to make their *poojah* preliminary to a plundering expedition, as usual with the Sonthals. Some five or six of the villagers, who had decamped, gave information to a temporary burkundaz by name Bhowani Singh who having collected some twenty men and fixing his bayonet marched at their head, and found the Sonthals still at their sacrifice. Shutting the doors, Bhowani and his men called on them to surrender, saying that if they did not lay down their arms and come out, they would call the military who were in the neighbourhood, the order was attended to and they were all apprehended.

No. 9, is a lad of about eighteen or nineteen of a very intelligent and pleasing countenance; he is stated by the evidence, and acknowledged himself to be a "Soobah" or chief, having been so appointed by the chief leaders Kanoo and Seedoo, he admits having joined in the insurrection, but says that it was through fear that he joined: he denies having committed any act of plunder or murder, and there is nothing to shew that he did so.

Nos. 10 and 11, are ordinary individuals; they acknowledge their confessions to having been engaged in the rebellion.

The fact of the three prisoners having been concerned in the rebellion is proved by the evidence and the admission of the prisoners themselves. The jury with whom I tried this case pronounce them guilty, in which I concur, and beg to recommend that Sham Manjhee Soobah, No. 9, be punished by imprisonment for seven years with labor

Vide Section 3, of Regulation V. of 1841.

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Case of SHAM MANJHEE SOOBAH and others.

in irons, and the remaining two men Haree Manjhee No. 10, and Chumpa Manjhee No. 11, be imprisoned for five years with labor in irons.

The case has been tried in this district, though it does not appear that any commission has been formally issued under authority of Government, vide Mr. Secretary Grey's letter No. 3574 of 15th December, 1855, and has been delayed till now on account of the illness of the defendants.

Vide Section 2 of Regulation V. of 1841.

I have ordered a reward of 10 Rs. to be given to Gopal Mahto one of the witnesses, to whose intelligence in a great measure the capture of these men is due; the burkundaz Bhowani Singh has left the zillah.

The other men that were caught at the same time as these, were committed for "plunder and riot," and punished without reference to Sudder Nizamut Adawlut by my predecessor, vide statement No. 8, for December, 1855. I would have sent back the present commitment to be amended to the same charge, but "riot" vide "Tomlin" and "Archibold" being applicable only to private enterprize, is so manifestly wrong that I thought it best to allow it to remain as I found it.

On perusal of the above report the following resolution was recorded by the Nizamut Adawlut (present: Messrs. H. T. Raikes and J. S. Torrens.) No. 580, dated the 8th July, 1856.

The prisoners are charged with "Rebellion" *only* and the sessions judge has found them guilty of the charge and referred the case to this Court for punishment of the offenders.

The only law providing for a trial of persons on such a charge by the ordinary courts is Act V. of 1841. But Section 6, of that law *enacts* that "when any person or persons shall be charged with the crimes mentioned in this Act" the magistrate shall give immediate notice to the Government and strictly obey any orders transmitted to him for committing them to take their trials before the ordinary court of the country; or before the special courts described in the Act. The Court therefore request to know what orders were transmitted to the magistrate from the Government regarding the trial of these prisoners.

The Court observe that the letter alluded to by the sessions judge No. 3574, of the 15th December, 1855, was on an ordinary reference under Regulation VIII. of 1822.

In reply to the above resolution the following letter was submitted by the sessions judge of Beerbhoom, No. 223, dated 18th July, 1856.

With reference to the Court's resolution No. 580, dated 8th instant, (received on the 14th idem) I have the honor to forward a copy of the letter* from the magistrate, to whom I applied

* No. 558, dated 16th July, 1856.

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for information as to whether he had made the application required by Section 6, Act V. of 1841.

I have also the honor to mention that, having doubts as to whether the ordinary courts were competent to try these cases without special orders from Government, constituting them a commission for the purpose (thinking that the authority given in Section 1, of Act V. of 1841, was intended only to be carried out according to Section 2,) I addressed a demi-official note to the Secretary to Government on the subject. The substance of his answer was, that according to Section 1, Act V. of 1841, and Act XXXVIII. of 1855, there was no question but that a zillah judge sitting in sessions was competent to try cases of rebellion, but that, whether the final order should be referred or not to the sudder Court was an open question.

From the officiating magistrate of Beerbhoom, to the sessions judge of Beerbhoom, No. 558, dated the 16th July, 1856.

I have the honor to acknowledge the receipt of your letter No. 220 of yesterday's date, forwarding copy of a letter from the sudder Court regarding my power to commit a case of rebellion without the orders of Government. In reply, I beg to inform you, for the information of the Nizamut Adawlut, that no reference to Government according to Section 6, Regulation V. of 1841 was made by me, because no commission such as that described in the Regulation had been empowered to try cases in Beerbhoom, and moreover, several similar cases had been committed by my predecessor without any reference, and to the legality of his thus proceeding no objection was made.

A commission under Act XXXVIII. of 1855, was issued to Mr. Yule, in May last, when I received orders from the Government to commit to him such persons charged with the commission of any of the offences specified in Clause 1, Section 1, of the Act within the territorial limits described in the same clause as he might desire, but the letter goes on to say: "In the absence, however, of any express requisition from Mr. Yule, you will continue to commit such cases *as at present* to the district sessions court."

Final Resolution by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) No. 678, dated 2nd August, 1856.

The Court observe that the question raised by their Resolution No. 580, of the 8th ultimo has been disposed of by their orders dated the 22nd idem, on the trial of Tooloe or Tonoo Manjhee. The Court now observe that the sessions judge has proposed sentences within his own competence to pass by Section 6, Act XXXVIII. of 1855, according to which he can punish for rebellion to the extent of a sessions judge's general powers. The Court therefore remand the case that the sessions judge may pass orders on it himself.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

MAHARAJ ROY

versus

SHEOBALUCK ROY.

Shahabad.

1856.

August 4.

Case of SHEOBALUCK ROY.

It is not necessary in every case to take a reply before punishing for a false and malicious complaint.

This case was referred to the Nizamut Adawlut, under Section 5, Act XXXI. of 1841, and Circular Order, dated 18th March, 1842, by Mr. A. Littledale, officiating sessions judge of Shahabad, on the 24th June, 1856, with the following report.

Maharaj Roy charged Sheobaluck Roy with threatening to commit a breach of the peace; the magistrate dismissed the case and sentenced him to pay a fine of twenty rupees, or to be imprisoned for fifteen days. Against this order, Maharaj Roy has appealed. Under Act XXXI. of 1841, I have no power to interfere in this sentence; but I find that the magistrate has inflicted this punishment on the appellant for making a false charge without taking his answer; this I consider is an irregularity of procedure rendering the sentence illegal and making it incumbent on me to place the case before the superior Court, with a view to their authorising me to quash the magistrate's proceedings and return it to him with directions to take the answer of the appellant, and then pass such orders as he may think proper.

P. S.—Since drafting the above paragraph, I have received the annexed explanation called for according to the standing orders of the Court from the magistrate.

From the magistrate of Shahabad to the sessions judge of that district, No. 321, dated the 19th June, 1856.

I have the honor to acknowledge the receipt of your letter No. 92, of the 17th June, 1856, and in conformity to the orders issued therein, have the honor to submit my remarks on the case in question.

You do not enter upon the merits of the case, but simply refer the question as to whether it is legal to punish for false complaint, a plaintiff without formally recording his "*jawab*" or answer, although the case both for plaintiff or defendant has been fully heard; I think it will be found that the Sudder Nizamut have, on a former occasion, ruled that in punishing a plaintiff for false complaint, it is not necessary to formally record the plaintiff's answer. This was ruled, I think, either in a Behar or Tirhoot case, some time in 1852 or 1853, but I cannot speak positively to this; the practice you advocate was always enforced by me until I became acquainted with this case; I submit further, that the recording of a *jawab* or defence for a

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Case of SHEOBALUCK ROY.

false complaint would, in the majority of cases, be a mere form and answer no good end; for if the plaintiff in his defence adduced fresh witnesses, they would have to be subpœnaed and the defendant would be put to the annoyance of attendance to rebut this fresh evidence. In some intricate cases, it is of importance doubtless to record the plaintiff's "*jawab*" previous to punishing for false complaint, but in a simple petty case of this description, it would be, I submit, a mere useless form even if required by law, which I submit is not the case.

I re-submit the case with your draft report.

Resolution by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) No. 679, dated 4th August, 1856.

As the magistrate has observed, in his explanation to the officiating sessions judge, it is not necessary in every case to take a reply before punishing for a false and malicious complaint, the Court do not, therefore, see any reason to interfere with the magistrate's order. They direct that a copy of their letter No.* 428, dated the 21st of May, 1851, addressed to the sessions judge of Behar, be sent to the officiating sessions judge for his information.

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* From the Register of the Nizamut Adawlut to the sessions judge of Behar No. 428, dated 21st May, 1851.

The Court, having had before them your letter No. 91, dated 8th Inst. direct me to inform you that they do not consider it to be strictly indispensible to take a defence from a party before sentencing him for a false and malicious charge, as the proceedings connected with the charge contain the proof of its being false and malicious, and it is upon them that his summary conviction is by law permitted. The Court, however, think that the party accused of bringing such a charge should be allowed, before being sentenced, the opportunity of making any statement by which he might desire to remove the impression of the false and malicious nature of the charge arising out of the proceedings. The absence of this statement does not, however, *vitiate* his conviction and sentence.

The original proceedings stated to accompany your letter of reference are herewith returned.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

AMEENOOLLAH.

Tipperah.

1856.

August 6.

Case of AMEENOOLLAH.

The prisoner was acquitted of forgery, as the alteration of date charged, although fraudulent, was not injurious. Case returned for orders to be passed on the charge of fraud.

CRIME CHARGED.—1st count, forgery by altering the date of an order of the principal sudder ameen of this district, Baboo Dwarkanath Roy, passed on an *urzee* of the nazir of his court on the 9th February, 1856, in an execution of decree case, Sibchunder Soom Sarbarakar *versus* Ramnarain Shaha, after the said order had been signed by the principal sudder ameen, defendant being at the time employed as a mohurrir in the office of the principal sudder ameen aforesaid; 2nd count, fraud in endeavouring by altering the date of the order as aforesaid to cancel from the principal sudder ameen the neglect of which he had been guilty as a mohurrir in the office in charge of the execution of decree cases.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah on the 26th May, 1856.

Remarks by the officiating sessions judge.—On the 9th February, 1856, it appears that the principal sudder ameen passed an order on the back of an *urzee* filed by the nazir of his court, directing the issue of notice of sale in the case mentioned in the 1st count. This was signed at the time and registered on the same day by witness No. 137, Mirza Punday Allee. The paper was then made over to the prisoner. Subsequently the prisoner was suspended in consequence of some alterations discovered in the date of another case, and Bulloram Sein witness No. 136, was directed to take charge from him of the papers under his care. On the 19th March, this witness discovered that the date of the order in question had been altered to the 12th March, and on looking at the registry book, and finding that the original date was the 9th February, he reported the circumstance to the principal sudder ameen. The prisoner was put on his defence and admitted that he had altered the date through fear of the displeasure of the principal sudder ameen on account of his neglect in carrying out the orders. His admission is established by the evidence of witnesses* Nos. 134, 135, 136 and 138. The attesting witnesses to the defence before the principal sudder ameen appear not to have verified it, and were not there-

* Wit. No. 134, Essan Chunder Goopto.
,, ,, 135, Juggut Chunder Goopto.
,, ,, 136, Bulloram Sein.
,, ,, 138, Rahimzan.

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fore sent in by the magistrate, but they were not called by the prisoner, and I see no reason whatever to doubt that the admission made was voluntary.

The prisoner now states that he was not in his senses at the time the defence was taken, and does not know what was written. One of his witnesses, a relation, supports his defence in this respect, but I place no reliance upon his testimony.

Wit. No. 136, Bulloram Sein.

It appears from the evidence of Bulloram Sein witness No. 136, that the prisoner made over to him a bundle containing a *robokarry*, sale notices, *perwannah* on the nazir and interest account, all dated the 12th March, the substituted date, bearing prisoner's signature at the foot, but not that of the principal sudder ameen. These are with the record, but the magistrate has omitted to enter them in the calendar. This fact taken with others affords a clear presumption that the prisoner and no other was the party by whom the alteration was made; moreover he was the only party who could be benefited by the alteration, for no one else could have been held answerable for the neglect and carrying out the order.

The evidence leaves no doubt on my mind of the prisoner's guilt. And the assessors Mahomed Wallee, sudder moonsiff, and Ramdeolall Deb, vakeel of this court, who were associated with me in the trial, were likewise satisfied of the facts of the alteration having been made by the prisoner. The first, however, considers that no fraudulent intention had been proved and is therefore for acquitting the prisoner on both counts, the second would convict on the second count only.

The prisoner cannot claim an acquittal on the ground that no party has been prejudiced by the prisoner's deed. But it is not necessary that any prejudice should in fact have happened to any body, any alteration of a document with intent to defraud or deceive is forgery. In this case it is clear that the intent was to deceive the principal sudder ameen, in the hope that the fault committed by the prisoner should not be discovered; Clause 3, Section 3, Regulation II. of 1807, defines the term forgery to include all fraudulent and injurious fabrications or alterations of written deeds, or of written papers of whatever description. Though the alteration in question is not an injurious, it is doubtless a fraudulent one, committed with intent to deceive. A somewhat similar case is reported in Volume II. of the Nizamut Reports, in which a thannah mohurrir, who had with a view of screening himself from blame, for deputing a burkundaze to investigate a case of theft, falsified the thannah diary with a view to show that the jemadar was not at the thannah on the day in question, this was held to be a forgery and the mohurrir convicted accordingly. In this case it does not appear that the falsification of the book was prejudicial to any party, I there-

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fore convict the prisoner of forgery, and in accordance with the Section 9, Regulation XVII. of 1817, sentence him to imprisonment for three years, but with reference to the circumstances would recommend a mitigation of the sentence to the extent awarded in the above cited case. A sentence of six months' imprisonment would, I consider, be a sufficient punishment for the offence of which the prisoner has been found guilty.

Resolution of the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton). No. 686, dated 6th August, 1856.

The law, Clause 3, Section 4, Regulation II. of 1807, enacts that forgery must be fraudulent and injurious. In this case the sessions judge records that the alteration of the date is not injurious. The Court are of this opinion, also, as no one can be injuriously affected by it. The prisoner made it only to screen himself. They therefore cannot sentence him for forgery. The sessions judge has given no opinion upon the second count relative to fraud. The Court therefore return the proceedings that he may dispose of it according to his judgment.

PRESENT:

B. J. COLVIN, ESQ., *Judge*, AND J. S. TORRENS, ESQ., *Officiating Judge.*

NUDIARCHAND GOPE AND GOVERNMENT
versus
GOPALCHUNDER CHUTTOPADHYA.

East-Burdwan.

1856.

September 1.

Case of GOPAL CHUNDER CHUTTOPADHYA.

Prisoner acquitted on a charge of murder, in concurrence with the *futwa* of the law officer, owing to the distrustful nature of the evidence adduced.

CRIME CHARGED.—Willful murder of Haradhun Gope.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 17th April, 1856.

Remarks by the officiating sessions judge.—Deceased was prisoner's servant and lived with him. On the morning of the 2nd of March, the first prosecutor came to his house to look for his brother. The prisoner told him that his brother had gone home the evening before. From the manner and from other circumstances the suspicions of the brother were aroused, and eventually the body of the deceased was found in the course of the day, buried in sand near the Damooda, with a deep wound in the lower part of the neck.

Witnesses Nos. 10 and 11.

Next morning the prisoner's premises were examined, vestiges of blood were visible within and outside a house, and a portion of the floor of that house had evidently been recently plastered with mud. Marks of blood were also visible on a mat.

Witnesses Nos. 2, 3, 4, 6 and 7.

Deceased's mother has deposed that she had seen those vestiges on the previous day, but it is most probable that her evidence is not altogether true.

Witness No. 9.

A boy is said to have given important information to the darogah, which he repeated before the magistrate, but which he recanted at the sessions.

Witness No. 8.

A bullock driver in the employ of the prisoner has deposed that he slept on the prisoner's premises on the night of the 1st of March; that the deceased slept in the house above referred to; that the prisoner's wife went in unto him; and that after some time the prisoner came with a knife in his hand, the woman ran away, the prisoner attacked the deceased, and then the witness also ran away.

Witness No. 1.

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The civil assistant surgeon has deposed that death was caused by the wound in the neck, which was probably inflicted by a sharp pointed instrument.

Witness No. 5.

The defence of the prisoner is that he was at Burdwan at the time of the murder, and five witnesses have deposed to that effect.

Witnesses Nos. 12 to 16.

The *futwa* of the law officer acquits the prisoner. He appears to believe every thing which has been urged in favor of the prisoner.

I dissent from that verdict and am of opinion that the crime of murder has been proved.

The prisoner is a Brahmin and there can be no doubt exertions have been made to get him off; the villagers would disclose nothing, and some of the witnesses for the prosecution are evidently favorable to the prisoner and have given their evidence with great reluctance.

There was no cause for the deceased's relations to accuse the prisoner falsely. There had been no previous quarrel. They appear to have been aware for some time of the intrigue between the deceased and the prisoner's wife, and when the former was missing, they immediately suspected that he had been murdered on account of that intrigue.

Prosecutor and witnesses Nos. 9 and 11.

In the first information of the murder sent by the phareedar to the darogah, the fact of the prisoner having been suspected is not mentioned. It is clear, however, that the relations did accuse the prisoner before the phareedar, for the prisoner in his defence has stated that he was apprehended by the phareedar before the arrival of the darogah.

There is no reason to disbelieve the particulars of the examination of the prisoner's premises. The witnesses to the *sooruthal* have impugned the manner in which it was drawn up; but their evidence shows that it is correct. The prisoner in his mofussil defence attempted to account for the suspicious marks and appearances, but his assertions are incredible.

That the deceased was alive in the evening of the 1st of March is admitted by both parties.

Nothing whatever has been elicited during the whole enquiry to cause suspicion to fall upon any one else.

Witness No. 1, is a man of weak intellect, but there is no reason to discredit the main facts of his testimony. He was kept out of the way for some days and although it was apparent that the prisoner was manufacturing *gour* at the time, and that he was using bullocks for that purpose, he could not shew that any other bullock driver was in his service.

The prisoner's defence is undeserving of belief. During the mofussil enquiry he did not advance the *alibi*. Burdwan is

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about five miles from the prisoner's house. The witnesses who have deposed to the *alibi* gave the dates on which they assert that they saw the prisoner, with great precision, but when asked the date of their depositions before the magistrate they were unable to answer.

I feel convinced that the prisoner murdered the deceased on account of the discovery of the intrigue. It remains to consider how far the provocation is to be admitted. "All* homicide is "presumed to be malicious, and of course amounting to murder, "until the contrary appears from circumstances of alleviation, "excuse or justification, and it is incumbent on the prisoner to "make out such circumstances to the satisfaction of the court "and jury, unless they arise out of the evidence produced against "them." "And further in all possible cases, deliberate homicide "upon a principle of revenge is murder. No man under the pro-"tection of the law is to be the avenger of his own wrongs. If "they are of a nature for which the laws of society will give him "an adequate remedy, thither he ought to resort, but be they of "what nature soever, he ought to bear his lot with patience, and "remember that vengeance belongeth, only to the Most High."

* Russell on Crimes, &c.

The question to be determined is "whether the suspension of reason continued from the time of the provocation received to the very instant of the mortal stroke given." The only evidence on that point is that of the witness No. 1, and even the facts that he deposes to, shew, in my opinion, that the act was not committed "during the suspension of reason."

Considering the great prevalence of crimes of this nature, and considering the facilities for escaping detection, it is necessary to inflict the most severe and exemplary punishment when they are brought to light. I would therefore recommend that the prisoner be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. S. Torrens.) The evidence which is put before us in this case is of the most unsatisfactory character, and according to it, we cannot but agree in the *futwa* of the law officer, as to the acquittal of the prisoner. The case is one of those of especially frequent occurrence, it appears, in the Burdwan district; in which from want of activity of the police or some even more reprehensible cause, they would appear to have allowed the real evidence to be suppressed, and to have supplied its place with what is chiefly counterfeit; a course which, if the party arraigned be guilty, is the most certain to effect his release. There is no doubt that a most deliberate murder of the deceased was committed, and suspicion can hardly fall stronger than it does on the prisoner before us. The deceased was his domestic servant; and as admitted, was in employment in his house up to the night on which the murder occurred.

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His brother having occasion to visit him comes to the house on the morning after, and is told that he had returned home the preceding evening. Other relations then also come to the prisoner's, and hear the same account; after which suspicion having been roused both by the prisoner's manner, and from the alleged circumstances of his wife having carried on an intrigue with deceased, a search is commenced by the relatives, and the body is found buried in the sand of the river Damooda, nearly two miles from prisoner's residence. On the next morning an examination of his house is made by the police, when marks of blood, as stated by some, and by others marks of what might be blood are found on the mat and on the mud or earthen floor, the latter it is stated, having been freshly plastered over. The prisoner's account of how these stains arose is very suspicious; that on the mat, he states, having been from the inoculation of his child, which had lately taken place, and that on the outer floor from the wounds of a cow. With the exception of the darogah, the witnesses to the *sooruthal*, before the sessions, depose very vaguely on the point, and some of them cannot depose at all positively as to the marks being those of blood. The mother of the deceased deposes that she had observed the marks on the day previous to that on which deceased was missing, and the sessions judge remarks that "it is *most* probable that her evidence is not altogether true." The above, according to the record before us, accompanied by the suspicious statements of the prisoner as to the cause of the blood-marks, is all that was brought forward to support the charge against him from the 2nd to the 17th of March. We have no trustworthy account given of how the relatives at once were induced to proceed to the spot where they found the body buried; nor have we any means of inferring how it was taken there. On the 17th however, the police produce witness, No. 1, Gopal Bagdee, who was not heard of or mentioned before, and who is alleged to have been employed as the herd of the prisoner up to the night on which the murder is stated to have occurred. The judge, in his comments or remarks on this evidence, simply says that witness had deposed to having slept in the house of the prisoner on the night of the occurrence, when he had seen the prisoner go with a knife into the apartment in which deceased was, along with prisoner's wife; that prisoner attacked deceased, when witness, as well as the wife, ran off. The judge accepts this evidence as true; but we have not the slightest doubt, whatever, that he has most incorrectly done so; and he should not have so cursorily passed it over in his report, as establishing the crime, or left unnoticed the objectionable nature of it. Witness can give no account of when or for how long he was engaged as servant of the prisoner, and what remuneration he received; he said, he never had before slept in the house, until

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the night of the murder. He gives no account of what he had done, after having run away, after witnessing the deed; at one time he states that prisoner's wife had gone to deceased's apartment with her child in her arms; at another, that she had gone alone. His account of how, whilst deceased remained lying down, the prisoner had quietly taken the knife and cut his throat, is wholly contradictory and incredible; and we cannot but altogether reject this evidence, both from its character and the time the witness was produced, as having been a contrivance of the police, from whatever motive, to make it supplant real evidence, which we cannot but think, could have been procured, and which would have better supported or connected the amount of circumstantial evidence, which is before referred to. The village in which prisoner's residence is, is between the place where the corpse was found, and the prisoner's house; and if the murder took place in the place alleged, efficient enquiry might have elicited, how and when the body was removed. The prisoner too is a brahmin, living, as it appears from the record, along with his wife, children and mother. In such a case the attendants and followers of the family must, we think, have been more numerous than the one domestic servant, the deceased and the witness Gopal Bagdee, even supposing his employment to have been as he states. From our having to reject the evidence of this witness, we are altogether thrown, under the manner in which the case has been investigated, on the slight amount of circumstantial evidence, which is detailed at the commencement of these remarks; and whatever extent of suspicion under such evidence may attach to the prisoner, we do not hold it sufficient for his conviction. He will therefore be released.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

FIRST PARTY, BRIJO KYBURTO (No. 15,) CHAMAROO KYBURTO (No. 16,) BASHEERAM KYBURTO (No. 17,) HARRUN DOSS KYBURTO (No. 18,) RAMPERSAD KYBURTO (No. 19,) HANIFF (No. 20). SECOND PARTY, SHURAFUTOOLLAH (No. 21,) BUKTYAR (No. 22,) AND GABROO (No. 23.)

Tipperah.

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Case of BRIJO KYBURTO and others.

CRIME CHARGED.—Affray, in which Sibram Kyburto was killed and Chamaroo and Shurafutoollah wounded.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah, on the 29th May, 1856.

An affray between *lattials*, and some fishermen: both parties punished; the aggressors severely. One of the *lattials* ought to have been committed for, and ~~convicted~~ of murder.

Remarks by the officiating sessions judge.—It appears from the evidence and the admissions of the prisoners, that the origin of this affray was a dispute between certain peadas of Dewan Monowur Allee, and the fishermen of the village of Behadoorpore, regarding some fish which the peadas are stated to have wished to carry off without payment. It is established by the evidence that two peadas chased by a party of from fifteen to twenty fishermen, were seen running from the direction of the ghat towards the house of Kartick Kyburto, where, and at the neighbouring house of Amir Allee, the peons of Dewan Monowur Allee were lodged. Here they seem to have made a stand threatening with their brandished weapon their assailants. It is then stated, Bodai, not present, and Haniff, prisoner No. 20, gave an order to beat the peadas, some fighting ensued, and Shurafutoollah, No. 21, with a spear struck the deceased Sibram Kyburto just below the waist, when he fell and the rioters separated. There is no positive evidence as to any other blows, but Chamaroo Kyburto, No. 16, shows the scar of a punctured wound on the cheek, and Shurafutoollah, No. 21, (though how he was wounded does not appear) shews a scar over the left eye, which he states was then and there effected by a party not before the court. That when Shurafutoollah, No. 21, came before the magistrate, the wound was judged to be recent and to have been probably inflicted as stated by him, I infer to have been the magistrate's opinion from the order given to the sheristadar to reinvestigate the case and enquire how he came to be wounded. No memorandum has been recorded by the

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magistrate, however, of the appearance of the wound at that time, and no evidence of his having received a wound at all has been adduced.

Who were the peadas that went to the village for fish, and who were seen running away chased by the fishermen, is not so clear, but Shurafutoollah, No. 21, is pointed out as one of them. If he is to be believed, Bukhtyar, No. 22, and Gabroo, No. 23, were the parties. Some of the witnesses state that Gabroo was not one of them. Be this as it may, I think it is clear that the original cause of quarrel was a dispute between the peadas and Brijo Kyburto No. 15, about some fish; that on Brijo's calling out, the other fishermen assembled with their boat poles and gave chase to the peadas, who having no chance against so many, ran off as fast as they could towards their temporary place of abode; that just in front of this the fight took place, when Sibram, who is stated to have come from a different village just at the time the fight commenced, was wounded by Shurafutoollah, No. 21, with a spear, from which wound he died the next day when on his way to the station in a boat. His deposition was taken by the burkundaz of the pharee apparently, but has not been admitted as evidence by the magistrate in consequence, as it seems, of its not having been verified by the witnesses, though no order on the subject appears on the record.

Witness No. 143, Hic Doss.

Hic Doss Kyburto the brother of the deceased, witness No. 143, was the first that gave information at the thannah. Before this court he gave evidence directly at variance with that given before the magistrate, and has consequently been sent to the magistrate with directions to commit him for perjury. The magistrate directed the darogah of thannah Cusba to investigate the case. The affray took place in thannah Nassirungger, but the darogah of that thannah being only acting in that appointment, another was apparently deputed. The darogah reported the charge proved against Shurafutoollah No. 21, only, and the magistrate took his defence and the depositions of some of the witnesses sent in, and among them of some of the prisoners now under trial, but as it appeared that Shurafutoollah had been wounded, the magistrate seems to have thought that the case was really one of mutual affray and therefore deputed his sheristadar and another darogah to make a joint enquiry. The result was the apprehension of the remaining prisoners now under trial.

Though some of the prisoners have previously given evidence in the case, viz. Chamaroo Kyburto, No. 16, Basheeram Kyburto No. 17, Rampersad Kyburto, No. 19, Brijo Kyburto, No. 15, and Haniff, No. 20, it does not appear to me that there is any bar to their being put on their trial, or convicted on independent

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testimony. No admission, of course, they might have made in giving their evidence, could be admitted to prejudice them in any way.

The medical officer found a severe wound penetrating the bladder, apparently inflicted with some weapon of the nature of a spear, which wound he considered was the cause of death.

The defence set up generally on both sides is, that, though present at the time, they took no part in the affray. Haniff No. 20, and Buktyar, No. 22, specially urge that they exerted themselves to stop the fray.

Shurafutoollah's No. 21's defence is, that Buktyar prisoner No. 22 and Gabroo, prisoner No. 23, went to the bazar for fish, where they got into a dispute and were detained by the fishermen. By order of Haniff mohurrir (not the prisoner) he and six other burkundazes went with Haniff No. 20, to effect their release. Before the magistrate he stated they went armed with spears, sword, &c.; that when they got there, Boodai gave the order to beat them and one Surra Kyburto struck him a blow on the eye, he sat down covering his wounded eye with his hand. Saw no more, but heard afterwards that Loll Singh had wounded Sibram Kyburto. He would not have any of the witnesses called in his defence examined.

This defence does not better his case, though he tries to shift the responsibility of having struck the fatal blow upon another. It is clear, if true, that he and his party must have gone with the intent to release their comrade by force, whereas the evidence would tend to throw the responsibility of the actual affray primarily upon the fishermen.

If the peadahs took or attempted to take away their fish by force, their proper course was to seek redress in the courts and not to take the law into their own hands; they were clearly guilty of tumultuously assembling and pursuing with arms in their hands, the retreating peadahs, and consequently have rendered themselves liable to punishment for the consequent collision. The peadahs in retreating were justified in keeping off their assailants as they best might, but when they had got to their house they might, as far as appears, have retreated into it; had an attempt been made to follow them further, it may be questionable whether a blow, which might have chanced to cause the death of one of the assailants, might not have been considered justifiable. That the prisoners were so pressed as to render the homicide justifiable in the present case, does not appear. At the same, time with the exception of the blow struck by Shurafutoollah, No. 21, I find no proof of any criminal act of violence against the prisoners Buktyar, No. 22, and Gabroo, No. 23, of which the court can take cognizance. There is no proof, as I have said, as to the parties concerned in the quarrel which was the original cause of the affray; it is probable that these two

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were among those pursued (It will be observed that mention is made by some, of three peadahs having come from the village). When the actual collision took place it does not appear that they took any active part. There is no proof that they took any willingly active part in the affray, and, it appears to me, are therefore entitled to an acquittal

The law officer finds the prisoner Shurafutoollah, No. 21, guilty of riot with culpable homicide on strong presumption, and prisoners Nos. 22, Buktyar, and 23, Gabroo, guilty of aiding and abetting him, and acquits the other prisoners.

I have above given my reasons for disagreeing with the above verdict.

I consider it fully proved that the prisoners of the first party, and Shurafutoollah, prisoner No. 21, are guilty of the charge of affray attended with culpable homicide, and that the prisoners Buktyar, No. 22, and Gabroo, No. 23, are entitled to be released. At the same time the affray does not appear to have been premeditated; had it not been for the unfortunate death of Sibram Kyburto the magistrate might himself have disposed of it under Section 5, Regulation II. of 1822. The homicide by one of the opposite party cannot be considered as an aggravation of the guilt of the first party.

A sentence of one year's imprisonment and a fine of 50 Rs. in lieu of labor in the case of Haniff No. 20, and of the same term of imprisonment in the case of Brijo Kyburto No. 15, Chamaroo Kyburto, No. 16, Basheeram Kyburto, No. 17, Harrun Doss Kyburto No. 18, and Rampersad Kyburto No. 19, and a fine of 15 Rs. in lieu of labor will, I think, be a fit punishment for the offence of which I hold them to have been guilty. There are extenuating circumstances as regards Shurafutoollah No 21, also, five years with labor appears to be a sufficient punishment, looking at the facts established by the evidence.

I accordingly convict the prisoner Shurafutoollah No. 21, and sentence him to imprisonment with labor for five years, and refer the case to the superior Court for final orders as regards the remaining prisoners.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) This is a very unsatisfactory case. The conclusions arrived at by the police and the magistrate's umlah in the enquiries, which they separately conducted in the mofussil, are widely different, and the names of the parties engaged in the affray are differently given by the same witnesses in the several depositions, which they made before the police, the magistrate and the sessions judge. The magistrate also has omitted to prove and place upon the record, the declaration

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given on oath by the deceased before the police darogah,* which, he ought to have been aware, it was his duty to do, (Vol. V. Nizamut Reports, p. 9.) Testing the evidence recorded in the sessions court by that taken before the magistrate and the police, and comparing the statements and admission of the different defendants we arrive, however, at the following facts.

The prisoner Shurafutoollah is the servant of a zemindar of the name of Dewan Munowar Ali, and was deputed with ten *lattials*, amongst whom were the prisoners Bukhtyar and Gabroo, to prevent the Ijardar of Attagram from completing a tank which he had commenced. They drove off the laborers, it seems, and remained in the neighbourhood to guard against a renewal of the excavation. In the immediate vicinity of the hut where they lodged was a *hât*, to which the deceased, the five Kyburts who are now on their trial and other fishermen were in the habit of bringing fish for sale. On the day of the affray some of the *lattials*, it is not quite clear which, or how many, went to the *ghat* where the fishermen's boats were lying, and attempted to carry off some fish without paying for them. An altercation arose which ended in the fishermen snatching up their *luggees* or boat poles, and giving chase to the *lattials*, who fled towards their hut. Their companions hearing the noise had already armed themselves, and advanced to a spot in front of the hut where they stood brandishing their weapons and defying the fishermen. On seeing this, the fishermen who are reckoned by some witnesses at eight or ten, by others at twenty in number, turned to fly, but at the instigation of two of their number, Boodaee (not present) and Haneef (No. 20,) they appear to have exchanged a few blows with their antagonists. Chamaroo (No. 16,) it is said struck Shurafutoollah, though the evidence on this point is very doubtful, (Shurafutoollah himself saying that he was struck by Surma Kyburto,) and the fray was ended by Shurafutoolla spearing the deceased (Shibram) with a *soolfee* above the right hip, and inflicting a wound which punctured the bladder and led to his death on the ensuing day.

The aggressors in this affair were unquestionably the *lattials*, some of whom attempted to plunder the fishermen, and all of whom espoused their comrade's quarrel and supported them with arms in their hands. Buktyar and Gabroo have been prominently named throughout the whole of these proceedings, as taking a leading part in the affray. In the first information laid at the thannah, Buktyar is the person principally mentioned: and he himself admits his presence on the spot, though he denies having joined in the affray. We have no doubt from

* The sessions judge says this deposition was given before the faree burkundaz, but this is a mistake.

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a careful comparison of the whole of the evidence, and the admission of the parties that Bukhtyar and Gabroo were both present actively aiding and abetting in the affray; and we accordingly sentence them each to three years' imprisonment with labor commutable to a fine of 100 Rs. The offence of the remaining prisoners, who are all fishermen, will we consider be sufficiently met by a sentence in each case of six months' imprisonment, and a fine of 15 Rs. in lieu of labor. The punishment which the judge has awarded to Shurafutoollah is, in our opinion, quite inadequate. This man went forth to fight armed with a deadly weapon, which it must be presumed he intended to use; he was not struck or in any way provoked by the deceased (who indeed, it is evident from the position of the wound, could not have been facing him when he was stabbed) and his party does not even appear to have been at any time pressed by their opponents. His crime therefore was clearly murder, and for that crime he ought to have been committed and tried. It is not in our power, however, to interfere with the sentence which the judge has already passed on this individual.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND BHOIRUB DUTT

versus

HARADHUN MANJHEE (No. 1,) NUDIAR CHAND MATIA (No. 2,) AND NUFFER COOSMATIAH (No. 3).

West-Burdwan.

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Case of HARADHUN MANJHEE and others.

Appeal rejected.

CRIME CHARGED.—Attempting to break into the house of the prosecutor Bhoirub Dutt, on the night of the 2nd January, 1856, corresponding with the 19th Pous, 1262, with intent to kill.

CRIME ESTABLISHED.—Attempting to break into the house of the prosecutor, Bhoirub Dutt, on the night of the 2nd January, 1856, or 19th Pous, 1262.

Committing Officer.—Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbettah.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 6th May, 1856.

Remarks by the sessions judge.—The terms of the court's decision in this case, drawn up under Act XXXIII. of 1854, were as follows:

The prisoners were committed by the deputy magistrate, because the third, viz. Nuffer Coosmatiah, had previously, viz. on

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the 30th of June, 1848, been sentenced to imprisonment for dacoity. The punishment ordered was reduced to seven years by Sudder Nizamut Adawlut, in their order passed in appeal on the 6th November of the above year.

It has been proved by the most consistent evidence, that all three prisoners were taken into custody, immediately on their jumping down from the thatched roofs of the prosecutor's *baree*, and after they had attempted to cut a hole in the wall of his house. A *seend katee* three *lattees* and a saw were, moreover, found in the enceinte, with some rope. The prisoners Nos. 1 and 2 confessed, without any apparent compulsion, both in the mofussil and before the deputy magistrate, and named prisoner No. 3 as their companion. They also stated, that their leader had been Sonatun Matia Suddial of Ghat Bhora, but that individual, though apprehended outside the *baree*, before the others jumped down from the roofs, was released by the deputy magistrate apparently, because it did not exactly appear, whether he had come to the spot as a thief, or as a police officer, for the purpose of apprehending thieves. The prisoner No. 3, pretended that he had come to the prosecutor's village to buy cows, and that he was apprehended, while lying in the road in a helpless state of intoxication, and falsely accused of attempting burglary by the other prisoners who were his enemies. All three prisoners plead *not guilty* before this court. No. 3, makes the same defence as before; No. 1, denying that he ever confessed, affirms that he had been to hire or collect coolies for *poolbundee* with prisoner No. 2, and was unjustly seized while quietly going along the road near prosecutor's house; and No. 2, after making the same statements as No. 1, adds, that they put up at Sonatun Matia Suddial's house, on the evening of the offence; that the *seend katee* and *lattees* were thrust upon them by the Sirdar Ghatwal and others, who accused them of attempting burglary; and that he did not know what he said or did at Gurbettah, because the said Sirdar Ghatwal (witness No. 3) had given him *gunja*, before he was *chelaned* to that place. The witnesses, adduced by the prisoners, do not substantiate their allegations.

The *futwa* of the law officer is one of conviction, on violent presumption, and declares the prisoner liable to *tazeer*. The court, though it considers the proof full and legal, mainly concurs in this finding, and therefore convicting the prisoners, sentences Nos. 1 and 2 to three years' imprisonment with labor in irons, and No. 3, who has previously been punished for a heinous offence to 4 ditto, with ditto in ditto; one year, included in the above sentences has been given to each prisoner in lieu of corporal punishment, and the zillah jail will be the place of incarceration.

The usual warrants will at once issue, and the officiating joint-

magistrate will be directed to confiscate the *seend katee, lattees*, saw and rope, taken with the prisoners.

The following irregularities, and short-comings, made their appearance during the trial. The first witness to the confession made before the deputy magistrate, viz. Kartick Churn Ghose (No. 7), was not sent to the sessions court, and there was reason to believe that the darogah of thannah Gurbettah had omitted to forward him on purpose. Witnesses Nos. 29 and 30 named by the prisoner No. 3, were not *chelaned* by the jemadar of Teleesair who gave no reason for the omission (N. B the evidence of these witnesses, of whom No. 29 had deposed before the deputy magistrate, was considered and declared unnecessary by the law-officer and myself, under section 49, Regulation IX. of 1793). The mohurrir took the evidence of certain witnesses on solemn declaration, which he had no authority to do, and although three *lattees* were taken with the prisoners, only one was laid before the sessions court. The necessary orders have been issued to the deputy magistrate and officiating joint magistrate, with a view to the prevention of such irregularities in future.

The record will be returned to Gurbettah as soon as the period of appeal shall have expired."

Remarks by the Nizamut Adawlut.—(Present: Messrs. E A. Samuells and D. J. Money.) The prisoners urge the same pleas in appeal which they put forward in the lower court; but their statements are improbable and unsupported, and their guilt is conclusively proved by the evidence on the record. We accordingly confirm the judge's sentence.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. KISHORY
versus
KALEECHURN SHAWE.

Tipperah.

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Case of KALEECHURN SHAWE.

Prisoner convicted of murder, and sentenced capitally.

CRIME CHARGED.—Wilful murder of Goluck Shawe and Musst. Parbutty.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah, on the 23rd June, 1856.

Remarks by the officiating sessions judge.—The prisoner and his two victims were, till within a few months, fellow-servants in the employ of Musst. Rai Mony Chowdrany. Goluck, deceased, and the prisoner were apparently both favored lovers of the deceased Parbutty. Goluck, though discharged from service some months before the date of the murder, seems to have been in the habit of visiting the house, and quarrels between him and the prisoner are represented to have before occurred. On the day of the murder the prisoner and Goluck were seen sitting in altercation in the verandah of Musst. Rai Mony's house (Parbutty being inside) by Chundro Mony Shawe, witness No. 1. This witness went about his business, but soon after heard the noise as of a person falling, and returning to the house, found Goluck lying in the southern end of the verandah with his head nearly severed from his body, and the prisoner striking with a large sacrificial knife (*oosie*) Parbutty who was lying in the inner room, weltering in blood. The witness gave the alarm, when Dyun and Issur Chunder Deo, witnesses Nos. 2 and 3. came up, and with their assistance he managed to secure the prisoner with the knife in his hand. The prisoner admitted, he had killed both the deceased from motives of jealousy. The knife is a large heavy iron weapon used for sacrificing animals. It is stained with blood and some pieces of hair are still attached to it. It appears to have been hanging for some time in the verandah where the body of Goluck was found. The civil assistant surgeon found the head of Goluck attached to the trunk by a small piece of skin and muscle at the junction of the clavicle with the sternum on the left side. The decapitation appeared to have been effected by a single blow, struck probably from behind.

On the body of Musst. Parbutty he found several wounds, the chief being an extensive wound commencing from about the

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top of the right ear behind, which extended along the bone, until it divided the cervical vertibræ. This wound was sufficient in his opinion to cause instant death and appeared to have been caused by a single blow. The weapon shown him he considered to be just the sort of instrument with which wounds of the description described would have been likely to be inflicted. The prisoner, before the darogah, stated that Goluck had killed Parbutty with a *dao* and wounded him, when he searched for a weapon to defend himself, and, finding the *oosie*, killed him with a single blow.

Before the magistrate he at first repeated a somewhat similar story, but when asked why Goluck should have killed Parbutty, admitted that he himself had killed her as well as Goluck. This statement he adhered to when asked after committal, whether he had any witnesses to call in his defence. Before this court he pleaded guilty, when called on, and at the close of the proceedings stated, that he had killed both the deceased, and that his statement to that effect made before the magistrate gave the correct account of the occurrence.

Even without his confession there would have been sufficient evidence for his conviction. For had his statement, made before the darogah, been true, the *dao* must have been undoubtedly found, and further the prisoner was seen striking Parbutty with the knife at a time when Goluck was lying dead outside.

One of the witnesses to the confession in the mofussil could not depose to what the prisoner had stated with any certainty, but the confession was fully verified by the remaining witness, and there does not appear to be the slightest reason to doubt its genuineness. The law officer convicts the prisoner of the wilful murder of both the deceased parties, and declares him liable to *kissas*.

I concur in finding him guilty of the offence charged, and can see no extenuating circumstances in the case, which would justify a recommendation on my part of the remission of the extreme penalty of the law. The papers of the case will accordingly be forwarded for the orders of the superior Court. Till these are received, the prisoner will be kept in close custody.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoner, both before the magistrate and the sessions judge, made a full, clear and voluntary confession of the murder. This confession is borne out by the evidence on the trial. He was found striking one of his victims, while the other lay close by with his head nearly severed from his body. He was apprehended with the *lethal* weapon in his hand, stained with blood; there are no extenuating circumstances; we concur with the sessions judge in convicting the prisoner of wilful murder and sentence him to suffer death.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MANICK GHOSE* (No. 5,) MUDUN GHOSE (No. 6.)

Hooghly.

1856.

September 3.

Case of MUDUN GHOSE and another.

The prisoner accused of river-dacoity was acquitted on appeal, the approver's evidence against him not being corroborated.

CRIME CHARGED.—1st count, dacoity on the night of the 3rd August, 1846, in the boat of Harofchand and Moorchand Muhajuns, near Doorgabash, thannah Nuddea, zillah Nuddea; 2nd count, dacoity on the night of the 27th March 1848, in the boat of Khoda Buksh, burkundaz, near Nowpara, thannah Hatrah, zillah Nuddea; 3rd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. R. Ward, dacoity commissioner of Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 5th April, 1856.

Remarks by the additional sessions judge.—The prisoners are charged with two specific dacoities, and with having belonged to a gang of dacoits. Both dacoities were on the river, the dacoits belonging to no particular gang, with no particular ringleader, and in each instance very few in number.

On the 3rd August, 1846, a boat laden with bales of cloth was attacked by eight or nine men, near a place called Doorgabash. About 500 rupees worth of property was carried off. No one on either side was wounded. To connect the prisoners with this crime, there is the following evidence only.

The approver, witness No. 1, in his confession taken down on 31st May 1854, named the two prisoners, as accomplices with himself in this crime; but two days after the occurrence, viz. on the 5th August, 1846, he made a statement on oath at the thannah that he was *not* present in the dacoity. It may very possibly be that his first statement was false and his second true; but judicially his evidence is worthless. He then stated that he had been invited to join in the dacoity but refused; that he had, unseen himself, witnessed all that had occurred; that the prisoner Manick joined in the dacoity, but not the prisoner Mudun (his nephew) but that he (witness) and Mudun consulted how they should make off with the stolen property the dacoits had hidden in land. All this is entirely opposed to witness's confession of 31st May, 1854, the substance of which he has accurately repeated before me to-day. The 2nd approver witness was not in this dacoity; but there is a collateral evidence

* Acquitted by the lower court.

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which I think (taken with the above) will sufficiently fix the guilt of it on the second prisoner, Mudun, though not on Manick. Seeboo, the Chowkeedar of the village of Soojunpore (near Doorgabash) made a deposition on the 5th August, 1846, without oath, before the darogah, to the effect that he had received charge of the prisoner, Mudun, from two persons named Bhobun Mundul and Modoo Dutt with a portion of the stolen cloth upon him, which was all subsequently proved to be correct. Manick Ghose prisoner had nothing to do with all this; and it was Manick Ghose, witness No. 1, and not Manick Ghose, prisoner No. 5, who was detained or sought for on Seeboo's information.

Both the approver witnesses confessed to the second dacoity at Noaparah, No. 1, on the 1st June, 1854, and No. 2, on the 24th of the same month, but both six years after the occurrence. During the whole of those six years they were probably in close intimacy, as they resided within a few miles (five only) of one another. They name the same persons as in June, 1854, and have throughout implicated one another and the two prisoners. One of the attacking party was wounded in this affair, and nothing was got by it. The second witness's confession is exceedingly bald and meagre, but that of the 1st witness gives more details. The dacoity was committed on a police-boat on its way up from Calcutta after depositing there some life prisoners. In neither this nor the other case, both of which came before the police, was there any one arrested and convicted for the real offence, but there is no doubt both dacoities were committed, and probably under the circumstances stated.

Still it is necessary to have some evidence in corroboration of the approver's denunciation of the prisoners in this last affair at Noaparah, and there is none whatever. Neither do the approvers say either offence was committed by a regular gang of dacoits with the usual features of a dacoity, I therefore acquit prisoner, No. 5, (Manick Ghose) on all counts, but I convict prisoner, No. 6, (Mudun Ghose) on the 1st count, in the calendar (only) and sentence him to ten years' imprisonment with labor and irons in banishment.

Of the two witnesses to character cited by the prisoner convicted, one spoke well and the other ill of him. His defence was an absurd one. One Narain Sirdar was, seven years ago, wounded and seized by the police through the prisoner's aid and the witnesses are his relatives. But the prisoner is also his relative; and the witnesses are approvers who spare no one.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The additional sessions judge has, notwithstanding the contradictory statements of the witness Manick Ghose, convicted the prisoner, upon the ground that he considers his last deposition, that the prisoner was in the first

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dacoity, confirmed by the enquiries consequent on the information given by Seeboo Chowkeedar, on the 5th August, 1846. But we find that the prisoner was then arraigned for having in his possession property suspected to have been acquired by theft or dacoity; of which charge he was, although first convicted by the deputy magistrate of Santipore, subsequently acquitted on remand by the sessions judge, to whom he had appealed. At the same time enquiry was directed by the deputy magistrate to be made into his character. With what result is not shewn. It is manifest that the investigation in question cannot afford such corroboration of the truth of the present deposition of the witness, No. 1, who charges a particular dacoity against the prisoner, as to justify his conviction upon it. We acquit him and direct his release.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND RUGHOO MARNAH

versus

GUDADHUR RUNNAH ALIAS GUDDYE RUNNAH, (No. 1,) BIDHIADHUR MISSER ALIAS BEEDOO MISSER (No. 2.)

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The prisoner's confession amounted to privity only to murder. Sentence passed accordingly.

CRIME CHARGED.—1st count, wilful murder of Bhoobun Marnah son of Rughoo Marnah plaintiff, for the sake of his ornaments, valued Rs. 46-4-0; 2nd count, aiding and abetting in the above crime.

Committing Officer.—Mr. V. H. Schalch, officiating magistrate of Balasore, Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 31st May, 1856.

Remarks by the sessions judge.—The particulars of the case are as follows:

During the *hooly*, on the 9th Cheit, Gudadhur defendant took the boy Bhoobun Marnah to see the festival. He was seen during the day in different places with the boy who then wore gold and silver ornaments; towards evening, Bhoobun in company with both defendants was seen near a tank three miles from his house, and close to this tank the upper-half of his body was found and recognised on the 11th Cheit, stripped of the ornaments, valued at Rs. 46-4-0. On the 12th Cheit, Gudadhur confessed to the police, and on the 13th before the magistrate. He confessed also before me, that he and Bidhiadhur had

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brought the boy to the tank, where Bidhiadhur then ripped him up with a knife, murdered him and robbed his ornaments, having first filled his mouth with twisted grass. He admits that, he told no one and accepted part of the silver ornaments, one of which (No. 1,) he produced. Bidhiadhur, defendant No. 2, denies the charge. A knife was found in Bidhiadhur's house marked with his name, whereon was a stain like blood, which Dr. Mantell tested, and swore to be neither vegetable matter nor rust, but he could swear, that it was human blood. It is extremely suspicious, as Bidhiadhur is a brahmin, and eats no animal food, and cannot account for the stain.

The law officer finds Gudadhur No. 1, guilty of being an accomplice, and of aiding and abetting in the murder of the boy Bhoobun Marnah and in the robbery of his ornaments worth Rs. 46-4-0, and declares him liable to punishment by *akoobut*. He finds Bidhiadhur No. 2, *not guilty* as the suspicion does not amount to *zin ghalib*. I agree as to the guilt of Gudadhur on the charges specified by the law officer and beg to refer the case to the sudder Court, with a recommendation that sentence of imprisonment for life in banishment with labor in irons be passed on him, and for want of sufficient proof and in spite of strong suspicion must acquit Bidhiadhur, defendant No. 2. His character seems so bad, that I have desired the magistrate to commit him to my court for trial as a bad character.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The evidence, which is against the prisoner in this case is wholly confined to what he details in his own confession. As we have to trust to this, and it is all that we have to guide us, it does not appear that this prisoner formed any design of the murder of the child, or that he took part in the act to an extent to make him an accomplice of the other party charged, and who he states actually murdered the child in his presence, though without any participation on his part. His confession is limited to the fact of his having accompanied the child and Bidhiadhur to the tank, being there present when the latter committed the deed which he discloses, and to the fact of his receipt from him of a part of the ornaments taken from the person of the child, as a bribe to his silence; all of which would only constitute privity to the murder of the child Bhoobun Marnah. Taking then into consideration all circumstances of the case, we think that a sentence of seven years' imprisonment with labor and in irons will be adequate for the offence proved and sentence him accordingly.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.
Officiating Judges.

GOVERNMENT AND KEENAR RAJWAR
versus
HORIL GOWALLA.

Behar.

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Case of HORIL GOWALLA.

Prisoner convicted of murder, transported. The release of other parties by the committing officer was required to be explained.

CRIME CHARGED.—Wilful murder of Kewul Rajwar.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 21st June, 1856.

Witness No. 10, Musst. Jeemee.
Prisoner's confession before police, magistrate and sessions court.

Remarks by the sessions judge.—The prisoner had reason to suspect his sister Musst. Jeemee, witness No. 10, a widow remarried but continuing to reside with him, of carrying on an intrigue with the deceased, the chowkeedar of the village. He had warned her the last two months, and had been brought to disgrace and trouble amongst his class on her account. As much is acknowledged by Musst. Jeemee herself, though the witnesses generally depose to their ignorance of any previous scandal arising out of her misconduct.

Returning home on the evening of the 11th May last, and not finding his sister in the house, the prisoner, according to his own confessions, at once suspecting where she was, went alone, which Musst. Jeemee, contra to the witnesses and circumstances of the case generally, also declares, direct to the deceased's, and there finding him in the act of criminal intercourse with his sister killed him on the spot. The within witnesses' depositions,* however, go to prove that the prisoner was accompanied by his relatives, Gopal and Kewa, and who were in consequence arrested, together with the prisoner shortly after the event, but were released by the deputy magistrate for want of proof of their guilt. They are described as having been unarmed, whilst the prisoner had a club.

* Witness No. 1, Soobratee Gwala.
" " 2, Bhoojul Gorait.
" " 3, Gopal Singh.
" " 11, Nurotun Roy.
" " 12, Bhooput Kulal.

Witness No. 1, Sobratee Gwala.

There was only one eye-witness, and his evidence does not extend to the completion of the homicide. The deceased lived in a shed at the back of Soobratee's yard. Soobratee alarmed by the deceased's outcries, rushed out and saw the prisoner and his two relatives beating the deceased inside the shed on the ground

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with pokes of the club, cuffs and kicks. On his approaching, prisoner struck him also. He went off and gave the alarm to the other witnesses. By the time they reached, the body was found pulled out of the shed and left close to the Soobratee's doorway, a few paces off. The assailants had disappeared, although, as already stated, immediately afterwards arrested. Musst. Jeemee also was first struck, but she escaped. There was mark of a blow on her right hand. The prisoner's person also shewed marks of two blows on his back, struck, as he says, by the deceased. Another strong presumption that he was not unaided in the act.

Prisoner's confessions. Witness No. 10, Musst. Jeemee.

The inquest and post mortem shewed that the deceased's death was caused by fracture of the ribs on both sides, with the exception of two or three. The lungs were found punctured with the fractured ends of the ribs and there was extravasation of blood in the chest.

Witness No. 3, Gopal Singh.
" " 4, Jean Roy.
" " 5, Balchund Koeree.
" " 6, Dr. J. B. Allen.

The jury unanimously convicted the prisoner of the wilful murder of the deceased.

Waheed Ushruf of Jeethoo, Behar.
Gungadut of Dadur, ditto.
Nurmo Singh of ditto, ditto.
Mosaib Ally, Mugsudpore, ditto.

The only difficulty in such a case is to decide whether the homicide was justifiable, wilful or culpable. I have great doubts whether the prisoner could have completed the deed so effectually and promptly alone and unaided. What Soobratee saw of the assault will not account for its rapid fatal result, which could scarcely have been effected inside a low shed, but outside as seems most probable from the body having been found close to Soobratee's doorway. Looking at the circumstances of the case and the nature of the injuries inflicted on the deceased, the probability is that the deceased was overpowered, kept on the ground outside the shed and stamped to death, as is usually the case when the ribs on both sides are fractured. Such an act must be seldom that of a single individual, however strong, whilst the prisoner is a weak looking creature.

But this is homicide after the rude habits of the prisoner's class as natural to them, as that by a more lethal weapon is in the hands of a higher class better able to afford one. The reality of the crime is much the same in either case, and it would be hard to condemn the poorer criminal solely, because by commiting the deed in his clumsier manner he had aggravated the offence.

Further, these kind of acts have been generally received as justifiable in cases where wives are concerned, but with any regard to native habits, the interference of a brother in a case like the present, where the sister was living under his roof, was

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almost as justifiable as that of a husband. The prisoner has been asked, why with his suspicions of his sister's misconduct he did not turn her out of his house? and he answered, because his mother had prevented him. But the very same argument is just as applicable to wives as sisters, as indeed is not unfrequently practised by the natives in either case.

As thus viewed and with regard to the precedent Dyaram Ghose *versus* Kachye Pal and another, Nizamut printed Decisions, 18th March, 1851, page 300, as far as it is analogous, I convict the prisoner on strong presumption of the culpable homicide of the deceased, under gross provocation, almost amounting to justifiable homicide, and would sentence him to imprisonment without labor and irons for a period of one year, but in like manner as in the case cited, am desirous that the superior Court should pass the final sentence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) Under the Mahomedan law as expounded by Aboo Hunifah, it was lawful to kill persons detected in the act of whoredom with a near relation or a female slave; and a case is to be found in the 1st volume of the Nizamut Reports (page 74,) where this doctrine was recognized, and the prisoner was held to have been justified in killing a man whom he found in bed with his sister. The 4th Section of Regulation IV. of 1822, was subsequently passed, however, for the express purpose of abrogating this doctrine. That Section declared that justificatory pleas, grounded on the fact that the murdered man was found in criminal intercourse with the prisoner's mistress or relation should, in future, form no bar to capital or discretionary punishments in cases of murder. "The judge or judges sitting on the trial," it is enacted, "shall pass sentence under the general Regulations, and on consideration of all the circumstances of the case, the same as if no such plea had existed."

The case cited by the judge from the volume of Nizamut Reports for 1851, is in no respect analogous to the one now before us. In that case, the deceased was detected in the act of criminal intercourse with the wife of the principal prisoner; and the brother, who, although present, does not appear to have taken any active part in the murder, was therefore allowed the benefit to some extent of the justification, which the other prisoner could lawfully plead. Here there is no husband to justify the deed, and the brother is himself the principal agent.

We are unable to follow the reasoning in the 7th paragraph of the judge's letter of reference. He can hardly intend to argue that the presence of accomplices, or the supposed fact that the prisoner killed the deceased by stamping on him instead of using a sword or *a lattee* would make any difference in the nature or degree of the crime; and yet we are unable to extract

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any other meaning from the paragraph in question. The mode which the prisoner may have adopted for the completion of his crime is no otherwise of importance, than as furnishing an indication of the prisoner's intention, of the existence or absence of that malevolence of disposition, which the English law terms malice; and it would be difficult, we think, to say from which of the modes of assault mentioned by the judge, malice could be most decidedly inferred. It is clearly on very different considerations that we must decide whether the prisoner is guilty of murder or of culpable homicide.

We regret that we can find no such circumstances of sudden provocation or absence of malice in this case as would justify us in acquitting the prisoner of wilful murder. He had been aware for two months previous of the criminal intercourse, which subsisted between his sister and the deceased, and it is impossible to come to any other conclusion from his own statements, than that he had for some time before the commission of the murder contemplated the death of one, if not of both of the guilty parties. His wife's relations, he says, taunted him with the conduct of his sister and urged him to kill her. That he listened to this advice is evident, for he consulted his neighbours on the subject; and they advised him to wait a month or two in hopes that her conduct might improve. When he found that she was not at home on the day of the murder he conjectured at once where she was, and proceeded to the house of the deceased in the full confidence of finding her there. There was therefore no surprise, no sudden provocation. He anticipated finding his sister in company with the deceased; and we cannot doubt, that before entering the hut where they were he had fully made up his mind as to the course he should pursue His attack on his sister and her companion was of the most determined character. He broke his sister's arm with the first blow of his *lattee* and he avowed afterwards in the confession which he made to the police that he would have killed her, if she had not escaped. He then turned upon the deceased; and, assisted by his brother and nephew, beat him with his *lattee* and kicked and cuffed him until he died. It is quite possible that he may also have stamped upon him as the judge infers, though neither the eye-witness Soobratee nor the prisoner himself makes any mention of such an act; but this is quite immaterial. If the fact were proved, it would not carry the evidence of the prisoner's intent one step further than it already goes.

The prisoner himself sets up no plea of sudden provocation.

Throughout his confessions he states, that he killed the deceased, because he had taken away his honor; and his own idea as well as that of his neighbours appears to have been that he was justified in doing so. We must be cautious that we do not encourage this idea by any undue leniency in our dealing

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with the case. While therefore we do not consider that the circumstances of this case are such as to call for a capital sentence, we conceive that we should not be warranted in awarding a lighter secondary punishment than imprisonment in transportation for life, which accordingly is the sentence we shall issue.

It is not apparent from the papers which have been submitted to us, on what grounds the deputy magistrate has acquitted the prisoners Gopal and Rewa, who are stated by the eye-witness Soobratee to have assisted in the murder. The prisoner's sister does not deny their presence; she does not seem to have been questioned on the point. The deputy magistrate will be called on for an explanation upon this point.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND RAMLOCHUN

versus

GOKOOL POONDURREE (No. 6,) CHOWDHREE SUBJEEFROSH (No. 7,) JUGROO MUNDUL (No. 8,) MOOLEERAM NAGOOREE (No. 9,) JUGGONATH MUNDUL (No. 10,) AND SHEIKH AMARUT (No. 18.)

Dinagepore.

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Case of GOKOOL POONDURREE and others.

The appeal of the prisoners convicted of dacoity rejected. Neglect of Reg. IX. 1796, noticed.

CRIME CHARGED.—1st count, dacoity with wounding, in which dacoity property to the value of Co.'s Rs. 293-8 was stolen; 2nd count, accessariship to the above dacoity; 3rd count, Nos. 6 to 9, knowingly receiving and having in their possession property obtained by the above dacoity.

CRIME ESTABLISHED.—Nos. 6 and 7, knowingly receiving and having in their possession property obtained by the above dacoity, and Nos. 8, 9, 10 and 18, dacoity.

Committing Officer.—Mr. E. C. Craster, officiating joint-magistrate of Maldah

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 25th January, 1856.

Remarks by the sessions judge.—This case was tried under Act XXIV. of 1843. On the night of the 16th October 1855, or 31st Assin 1262, B. S. some twenty dacoits attacked the house of the prosecutor singed him with lighted *mussals*, wounded his servant and carried off property valued at Rs. 293-8. The prosecutor's house is some eight miles south-west of Maldah where the prisoners resided. On the previous day "Dusoruth Chowkeedar" (witness No. 7,) accompanied a peadah to serve a summons on the servant of Gokool (prisoner No. 6,) and observed

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the said Gokool Chowdhree (prisoner No. 7,) and Amaruth (prisoner No. 18,) all bad characters, in consultation. At night he ascertained that Gokool (prisoner No. 6,) who lived in his division was not at home and subsequently that Chowdhooree (prisoner No. 7,) who lives in another division was also absent. Towards midnight he gave notice of the above at the thannah when the houses of the absentees were surrounded and a look out kept for their return. Early next morning "Gokool" prisoner No. 6, was apprehended coming towards his house with plundered property; Chowdhooree prisoner No. 7, was also apprehended; confessed to having accompanied the dacoits for a short way; produced plundered property and named sundry accomplices. Plundered property was also found on "Jhugroo" prisoner No. 8, and Mooleeram prisoner No. 9, who, as well as "Jugonath" prisoner No. 10, confessed in the foujdary. Amaruth prisoner No. 18, was recognised by the prosecutor as the dacoit who held his hands while others singed him with lighted *mussals*. The prosecutor is an old but intelligent man and accurately described the appearance of the prisoner before he was apprehended. I considered his evidence, supported by that of "Dusoruth" witness No. 7, and the confessions of the other prisoners, sufficient for conviction.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven years.

Resolution of the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton,) No. 357, dated the 2nd May, 1856.

The Court observe that prisoner No. 6, Gokool Poondaree, has appealed, alleging that the evidence of Bungsee chowkeedar and Bhugeerut chowkeedar, witnesses, essential to his defence, and named by him before trial, was not taken. The Court find this to be the case and that the sessions judge was satisfied with the Bukshee's report of their absence without cause assigned. It appears also that the evidence of Lalbehari, Lalsoonder, Sheikh Motee, Sheikh Koondoo, Golab Ustagur, Sher Alee Khan and Meerloll, witnesses on behalf of the prisoner No. 18, Sheikh Imarut, was not taken on account of their absence. It was imperative on the sessions judge by Regulation IX. 1796, to enquire into the cause of the non-attendance of the witnesses. The law has been repeatedly* brought to his notice lately. It further appears that Gokool Poondaree in his defence, before the sessions judge, urged enmity on the part of Ramloll Singh, witness No. 1, and instanced a case of false accusation of the prisoner by him. This was a point which the sessions judge ought not to have overlooked enquiry into. The Court therefore return the proceedings with directions to the sessions judge to take proper steps for the attendance of the witnesses abovenamed, or

* See for instance Nizamut Reports for January last, page 1.

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to have their non-attendance satisfactorily accounted for if absent. The sessions judge will likewise inquire into the plea urged by prisoner No. 6, and form his own opinion of his guilt after consideration of it; he will then re-submit the proceedings for the order of the Court.

From the sessions judge of Dinagepore, to the Register of the Nizamut Adawlut, No. 153, dated the 25th July, 1856.

With reference to the Court's Resolution of the 2nd May last, No. 357, I have the honor to re-submit the proceedings in the case of Gokool Poondaree and others, statement No. 6, for January, 1856.

The evidence of Lalbehari, Sheikh, Motee, Sher Alee and Sheikh Phagoo (Koondoo in Resolution) witnesses for the prisoner No. 18, "Imarut" has been taken. One witness "Lalsoonder" is reported dead. Golab Ustagur is by mistake mentioned in the Resolution as a witness. The words used were intended to designate the witness Sher Alee as Golar Uparkar. The witness Meerloll was reported as having left Maldah and a man sent by me to his house stated that he had not returned. His evidence would probably not have been of much use to the prisoner, as his witnesses who were examined gave him a very bad character and said nothing in support of his defence.

Bungsee chowkeedar and Bhugeerut chowkeedar, named as witnesses by the prisoner No. 6, Gokool Poondaree, appear to be fabulous. The prisoner declared that they were chowkeedars of Foolbaree (father-in-law and son-in-law) and that he had been apprehended by them. The darogah reported that Bungsee chowkeedar of Foolbaree was dead, and that there was no such person as Bhugeerut chowkeedar in that division. The prisoner declared that both Bungsee and Bhugeerut were in the town, on which I sent a chaprassy to bring them. Bungsee appeared and said he had never been in the Foolbaree division. In lieu of Bhugeerut, Bhoirub appeared and declared that his son-in-law, Bungsee of Foolbaree, died a few months ago. The prisoner declared that he was not certain as to which was father-in-law or son-in-law, but that the men present were not his witnesses. In the prisoner's mofussil and foujdaree answers, there is no mention of Bungsee or Bhugeerut, though in the latter he gave a very long detail of the manner in which he was apprehended. After he was committed he named them, but as his three answers are all contradictory, I am inclined to think that he named them to make matters still more confused.

With reference to the prisoner's plea of enmity on the part of Ramloll Singh, witness No. 1, I sent for the record. Two parties complained against each other of assault. Ramloll's case was dismissed and he was fined 50 Rs. but I cannot find Gokool Poondaree's name, though he may have been a servant of the party opposed to Ramloll, or very possibly the prisoner alludes

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to some other case, as he states that Ramloll inflicted a wound on his head, accused him and was fined only 2, 3 or 5 Rs.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The sessions judge having now taken all the evidence for the defence that was procurable, we concur with him that it does not exculpate the prisoners. We therefore see no reason to interfere with their conviction, or with the sentence passed upon them. It was the duty, however, of the sessions judge to explain, in his original remarks on the trial, all which now appears with reference to the absence of the witnesses who had been cited for the defence.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GUNESH BAGDEE (No. 23,) AND SHAM PUNDIT DOME (No. 24.)

Hooghly.

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Case of GUNESH BAGDEE and another.

One prisoner convicted of having belonged to a gang of dacoits, another charged with the same crime was acquitted.

CRIME CHARGED.—1st count, dacoity on the night of the 17th December, 1851, in the house of Naboo Jola Kangar of Razeepore, thannah Dhonyakhallee, zillah Hooghly; 2nd count, dacoity on the night of the 7th November, 1852, in the house of Rammohun Mookerjea, of Bellya Hurrishpore, thannah Huripal, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 30th May, 1856.

Remarks by the additional sessions judge.—The prisoners are charged with two specific dacoities, and with having belonged to a gang of dacoits, and plead "*not guilty.*" The first prisoner says he does not know by sight even the first approver witness, and the second prisoner says *he* does not know the second approver witness. He had had a quarrel, he adds, with the 1st approver about a goat. Both tender evidence to character only.

The first dacoity occurred at Razeepore on the night of the 17th December, 1851. The approver Bishn Haree, confessed to having been concerned in it (and many others) on the 8th April, 1854. He then named amongst his accomplices the prisoner Gunesh, but not the prisoner Sham Pundit. Before me he asserts on oath *both* were there with him. The incidents

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of the dacoity he describes both times alike. To connect the prisoners with this dacoity we have, besides the direct evidence of this approver, as follows: on 18th December, 1851, the day following the dacoity, one Sreemunt Dooley, who had been suspected of having had a hand in it, and been apprehended, confessed his complicity and denounced the prisoner Gunesh as an associate. On the same day one Noboo Shikaree also confessed, also implicated the prisoner Gunesh, and added that he met the dacoits the day of the dacoity at the house of Sham Pundit, the second prisoner. On the next day 19th December, Bishtu Haree (now a convict in transportation for life) confessed and named the prisoner Gunesh under the *soubriquet* of "Gona," and *he* added the spoil acquired in the dacoity was sold to the prisoner Sham Pundit. On the same day, Golam Haree confessed and denounced the prisoner Gunesh, who was ultimately arrested and discharged by the magistrate for insufficient legal proof of complicity. The first approver witness says before me, as in the lower court, that he forgot to name the prisoner Sham Pundit as connected with him in this dacoity, although he did so with regard to several other dacoities (which is the case) and he adds that "neither he nor the said prisoner were implicated by other confessing associates at the time, as actively engaged in the commission of the offence as they would by so doing have prevented their ultimate release by bribery conducted by the prisoner through the witness, the chowkeedar of the place."

To the second dacoity at Beli Hurrispore, on the night of the 7th November, 1852, both approvers confessed on the 10th April, 1854, and 2nd June, 1854, respectively, when they both implicated the two prisoners and each other, as again now on oath as witnesses. The evidence is corroborated by a previous confession of the approver Modhoo Haree in 1853, when he was taken up for this dacoity, confessed, and was convicted and sentenced to a long term of imprisonment. He applied to the dacoity office from jail to be admitted as an approver, and was admitted accordingly at the end of May, 1854.

The evidence is weaker against the prisoner Sham Pundit than the other, but is still, I think, sufficient to convict him too of having belonged to a gang of dacoits, notwithstanding that their witnesses all give them a good character. I beg to recommend they be both sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) With regard to the first case, we consider the evidence of Bishtu Haree, witness No. 1, to be sufficiently corroborated against the prisoner Gunesh Bagdee. Several parties arrested at the time of the occurrence mentioned his name as having been engaged with them in the dacoity; and the evidence against him in the second case is amply corro-

borated by the confession of Mudhoo Haree in 1853, who mentioned both him and witness No. 1, now deposing against him, as present. We therefore convict him of being a professional dacoit and sentence him to transportation for life. In the case of the prisoner Sham Pundit, corroboration of the evidence of the approvers is wanting. It is shewn that he was not named in the first deposition of the witness No. 1, in the Razeepore dacoity; and in the second instance Mudhoo Haree left him out in his confession made in 1853. We therefore acquit him and order his release.

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PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS., *Officiating Judges.*

GOVERNMENT AND DHOOROOB PANEEGRAEE

versus

BYDE PANEEGRAEE (No. 1,) FAQUEER BARA (No. 2,) AND NARAIN BARA (No. 3.)

Cuttack. 1856. September 4. Case of BYDE PANEEGRAEE.

CRIME CHARGED.—Prisoners Nos. 1 and 2 are charged on the 1st count, in having on the night of 19th Falgoon, 1263, Umlee, corresponding with 29th February, 1856, wounded plaintiff with a sharp pointed bamboo with intent to kill him. Prisoner No. 3, is charged on the 1st count; and prisoners Nos. 1 and 2, on the 2nd count, with aiding and abetting in the above crime of wounding with intent to kill.

Committing Officer.—Mr. V. H. Schalch, officiating magistrate of Balasore.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 26th May, 1856.

Remarks by the sessions judge.—The particulars of the case are as follows.

Prosecutor Dhooroob Paneegraee says, that at about two in the morning of the 29th February, when asleep with the door open, his own brother Byde Paneegraee No. 1, prisoner, came with a sharp pointed banghy pole and struck at his stomach. He raised his leg and received a wound in the thigh on which he exclaimed, You, my brother. Then immediately prisoner No. 2, took the banghy pole and stuck it into his chest, when he seized the pole and was dragged half over the threshhold of the door. He then shouted, his blood flowed, his neighbours came, and he fainted. It was a clear moonlight, but inside the house prisoner No. 2, held a torch of grass which he blew into a blaze, by which prosecutor recognized all three of the

Two prisoners found guilty of aggravated assault attended with severe wounding and sentenced to five years' imprisonment with labor in irons; the Court was unable, looking to the instrument with which the wounds were inflicted and to the other circumstances of the case, to infer an intent

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to kill, on the part of the prisoners.

A third prison was convicted of being an accomplice to the above crime and sentenced to 3 years' imprisonment with labor and irons commutable to a fine of 50 Rs.

prisoners.* His brother had a quarrel with him because he smoked opium and wished to sell his share of their joint property. His brother prisoner No. 1, had left their joint home that night. His mother and wife each slept in separate but adjoining houses; one wound was on the thigh and soon healed, the other is described by the Doctor as dangerous. It pierced into the cavity of the chest and was likely to have caused death.

Prisoner No. 3, was seen by witnesses as standing near their house; that he ran past the outer gate of prosecutor's court which joins that of the witnesses; that from that gate prisoners Nos. 1 and 2 came out joined No. 3, and all took an easterly direction and ran away; other witnesses who live eastward heard a noise, and saw them all pass but received no answer to their question.

The banghy pole weighs eighty-seven tolahs, is peculiarly cut and is pointed at both ends, and, the Doctor says, *may* have caused such wounds.

The mother and wife of prosecutor gave evidence for the defence. The mother contradicts what she said before the police. The wife was fastened into another house from the outside.

The law officer wishes to acquit all three prisoners.

1st. Because whilst the torch was being blown into a flame, prosecutor did not cry for assistance on seeing the prisoner.

2nd. That the witnesses who saw them running away would have stopped them knowing that something must have occurred.

3rdly. That the evidence of the wife of prosecutor is important, as she says that she and the mother were alone with prosecutor for some time before the witnesses arrived, whilst they say, they saw her let out of her house.

I differ with the law officer on each point:—

1st. A man waking and seeing by any kind of light his own brother who lives with him standing near him, would scarcely at once call out for help.

2ndly. The witnesses seeing the owner of the house whence the noise came running from it, would be likely only to ask what was the matter and not to stop him.

3rdly. I lay little stress on the evidence of the mother or the wife; that of the mother is contradictory, and as the wife was in a separate house with the door fastened from the outside, some time must have elapsed before the mother could have gone from her house to that of her wounded son, and leaving him, to that of his wife, which she had to unfasten, and it is very probable that the witnesses may have come near and seen her do so; at any rate I cannot disbelieve them, because she says she got out before they came. That she should have been fastened in on that night rather tells against prisoner No. 1, who of

* The prisoners are in jail.

course knew where each slept, which a stranger would not have known.

There is however a discrepancy in the evidence of Gungadhur Paneegraee, witness No. 6; as before the magistrate he swore that that he did not go to the house of the prosecutor on that night, whilst before me he gave evidence as to what he saw when at the prosecutor's house on that night, and I have directed the magistrate to commit him on a charge of perjury, as the point is important in this case. I do not see reason to doubt the evidence of the other witnesses. I know not why he should falsely accuse his brother, but a cause for his brother to quarrel seriously with him existed, as he wished to sell his share of their joint property.

I therefore consider Byde Paneegraee, prisoner No. 1, and Faqueer Bara, No. 2, guilty of an attempt to murder Dhooroob Paneegraee, and Narain Bara of aiding and abetting in the above crime, and I would recommend that sentence of fourteen years' imprisonment with labor and irons be passed by the sudder Court on prisoners Nos. 1 and 2, and of seven years with labor in irons on prisoner No. 3.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The prosecutor in this case deposes distinctly to having recognised the prisoners Nos. 1, 2 and 3, and he details the wounds which he received from the prisoners Nos. 1 and 2 respectively.

The witnesses Nos. 5, 6, 7 and 8, depose to having heard a noise on the night in question, and to having seen the three prisoners running from the plaintiff's house in an easterly direction, and witnesses Nos. 5, 7 and 8, depose to having gone to plaintiff's house on the night of the occurrence, to having seen the plaintiff wounded, and to having heard from him there that the wounds were inflicted by prisoners Nos. 1 and 2.

The evidence of the mother and wife of the prosecutor, as given before the magistrate and the sessions judge, is so contradictory that we put no reliance on it at all.

The wounds inflicted upon the person of the prosecutor were severe, and one of them, which perforated, the chest, was of a serious character; looking, however, to the instrument with which they were inflicted and to the circumstances of the case, we are unable to infer an intent to kill on the part of the person who inflicted them.

The prisoners set up an *alibi* which has entirely broken down.

We convict the prisoners Nos. 1 and 2 of an aggravated assault attended with severe wounding, and prisoner No 3 with being an accomplice in the same, and we sentence prisoners Nos. 1 and 2 to five years' imprisonment with labor in irons, and prisoner No. 3 to three years' imprisonment with labor in irons commutable to a fine of 50 Rs.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

Hooghly.

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Case of GOLUCK CHUNDER ROY, JEMADAR.

The prisoner, a police jemadar, convicted of counselling and procuring the commission of dacoity and of sharing in plunder so obtained was convicted and sentenced under Sec. 4, Reg. 3, 1805.

GOLUCK CHUNDER ROY, JEMADAR.

CRIME CHARGED.—1st count, having on or about the 25th June, 1851, procured, counselled and abetted one Dolu Sirdar and others to commit a dacoity in the house of Irad Cazee, at Sooltanpoor, thannah Lubsha, zillah Baraset; 2nd count, having been accessary before the fact to the above dacoity; 3rd count, having systematically procured, counselled and abetted the said Dolu Sirdar and others to commit dacoity; 4th count, having systematically, unlawfully and knowingly received or bought property stolen or plundered by dacoity; 5th count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, dacoity commissioner at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 10th July, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with being accessary before the fact in the dacoity at Sooltanpore, on the 25th June, 1851; with systematically aiding and abetting in dacoities; with systematically knowingly receiving property acquired by dacoity; and with having belonged to a gang of dacoits. The first two counts in the calendar are in reality but one, for to participate by advice, or to procure counsel, or command a felony *is* being an accessary to it before the fact. The prisoner was for many years over 1851 jemadar at the Chandooree pharee, zillah Nuddea.

The three charges above detailed have been fully brought home to the prisoner, whose defence, to be mentioned hereafter, in no way clears him. The approver, witness No. 1, "Sona," confessed at Hooghly to the dacoity Commissioner on 12th August, 1855, to amongst others the Sooltanpore dacoity in zillah Baraset, for which several persons have been already convicted and punished. In that confession he stated as follows: "Haniff got up this dacoity. He was the informer and suggested it to Dolu Sirdar, *who settled matters with Goluck Roy the jemadar of the Chandooria pharee.* Sultanpore was a long way off and likely to be a heavy business, so he asked the phareedar to give him a burkundaz or two. Goluck Roy agreed, &c. Goluck Roy sent Chunder Goala to me and I accompanied him to the pharee, &c. &c. Dolu Sirdar took the spoil to Goluck Roy, but I do not know where it was sold. I got a few rupees, &c. &c. *Hanif was*

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Case of Goluck Chunder Roy Jemadar.

seized and confessed, Goluck Roy was also arrested, but released on paying the darogah." This approver witness in his deposition on oath before me confirms this story and adds the prisoner was in the habit of receiving plundered property acquired by dacoity in concert with him (witness) and Dolu Sirdar, and he names as instances the dacoities at Brijbaksa, Goolihata, &c. On referring to the witness's confessions in August, 1855, to these dacoities, I find he therein implicated the prisoner in the same manner as he did in the Sooltanpore case; while in both the last cases named before Sooltanpore, as well as at Sooltanpore, Dolu Sirdar was the leader of the gang.

The approver witness Budon, No. 2, confessed to the Sooltanpore dacoity on the 11th April, 1856, *in the Allipore jail*, and his story was this *to the magistrate of the 24-pergunnahs*. "Dolu Sirdar gave notice of the job (the proposed dacoity at Sooltanpore), Haneeff was the person who suggested it, he had been a servant in the house; (Sona, witness No. 1, said this too) Chunder Goala, *whom Goluck Roy jemadar had sent*, was one of the party. Dolu Sirdar took the plunder to sell and promised us a share." In his confession at the same time to the Entally dacoity, this witness said, "One of us confessed and we were all detained. Huranund (witness No. 4, in this calendar) lived for a time with Goluck Roy jemadar;" while in his general confession to the dacoity commissioner on 23rd April, 1856, he added: "Goluck Roy jemadar was in league with Dolu Sirdar, and used to get up dacoities and advance money to Dolu, and send burkundazes (peons?) to assist and bring back the plunder under escort." Before me, this witness has detailed the particulars as in his previous confession; and his account of them agrees perfectly with that of his fellow approver, witness Sona.

Witness No. 5.

Now it is quite certain from the evidence of the keeper of the Allipore jail, Mr. Floyd, as also from the record, that all communication or concert between these two approver witnesses was *physically impossible*, Sona Hajam who had been for some years a convict in the Allipore jail, confessed to the Sooltanpore dacoity on the 12th August, 1855 at Hooghly, where he had been sent on expressing a wish to confess three days previously by the magistrate of the 24-Pergunnahs. On and before the 9th August, and over the 12th ditto to the 16th Budon was in the Allipore *hajut* guard, from which he was subsequently moved into the jail after conviction, where he has since remained. Communication between the *hajut* guard house prisoners and the convicts in the jail is impossible, and from August 1855 to 11th April, 1856, when Budon confessed at Allipore, the two were thirty miles apart *and were besides on bad terms*, for Sona gave evidence against Budon in July 1855.*

There is, how ver, more evidence

* S. N. A. 1856, I, 32.

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besides the irresistible concurrence of independent testimony just alluded to. One Roopchand Mussulman was transported for life as a dacoit in the year 1855. In his confession to Mr. Jackson, dacoity commissioner, *on 22nd March*, 1853, he stated as follows, "Goluck Roy jemadar of the Chandoorea pharee, in zillah Nuddea, was connected with the dacoits. I have never known the jemadar himself go out on an expedition, but he used to make us give him a share of the spoil, keeping ten annas worth in every rupee for himself. He used to send his own peadas when we did not commit dacoities sufficiently fast for him, to collect the gang, and make us go, &c. He used to send so called burkundazes with us," (these men, Ishur Roy, Deendial Roy, &c. named by Haneeff, a convicted dacoit, who confessed to the Sooltanpore dacoity on 5th July, 1851, have been often named as attached to the prisoner's pharee, but have hitherto evaded capture.) "In the Sooltanpore dacoity case, confessions were made implicating the jemadar. There was a man lived at Chandoorea, who had a large *moodie's* shop in the village, close to the pharee. When the property from a dacoity was to be sold, and the proceeds divided between us and the jemadar, we used to take it to this man, whose name I don't know, and in the jemadar's presence sell it to him and share the proceeds. When we wanted money, the jemadar used at times to give us a few rupees and to pay the expenses of the road while going on expeditions." This Roopchand could have never possibly had any communication with the other witnesses. He arrived at the Allipore jail on 5th July, 1855, and was transported on 4th August, 1855, and could never have seen either Budon or Sona; for, with respect to the latter, the portions of the jail for convicts and for life prisoners, sentenced to transportation, are separate and distinct, and communication is not allowed. I must add the Bengali attested confession of this Roopchand is not forthcoming; but I have examined the English version of it recorded by Mr. Jackson himself at the time in his own handwriting.

Mr. Floyd, witness No. 5.

Again, Sookur Gazee, witness No. 3, is a convict in the Allipore jail, who has volunteered information to the magistrate of the 24-Pergunnahs. He swears, the prisoner was in league with Dolu Sirdar, the noted dacoit leader for a length of time.

Next, the witness, Haranund Dutt *Kaist*, confessed to having been concerned in the Entally dacoity in July 1855,* was admitted as an approver, and testified *against* Budon, the 2nd witness in this calendar. He then said incidentally, and evidently without any ill-will against the prisoner in particular, that he was for a short time in the prisoner's service as a copyist at the Chandoorea pharee when prisoner and Dolu Sirdar were in league, the latter calling

* S. N. A. 1856, I, 31.

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the prisoner his *dhurmo bap*, or adopted father. Before me, he repeats this statement on oath, and in explanation asserts that he himself was once sent by the prisoner on a dacoity expedition to Mudunpore. He thinks prisoner was Dolu Sirdar's wife's *dhurmo bap*. "Whatever Dolu got, the prisoner shared in getting far the largest proportion. I have seen him receive plunder. I got 4 Rs for what I did in the Mudonpore affair from Dolu Sirdar in prisoner's presence. This was about five or six years ago. He dismissed me when the enquiry got warm into the Sooltanpore business. I was about three months in his service before that." It will be seen that the evidence for the defence confirms the last part of this statement though brought to refute it. This witness was never inside the Allipore jail at all.

J. Floyd, witness No. 4.

The dacoity commissioner quotes in support of this last witness's testimony the confession of Tameezoodeen approver. As Tameezoodeen might have been produced to support his confession on oath, I must consider it inadmissible.

The prisoner's defence in the *lower* court was a very curious one. He said of the witnesses against him he only knew two, and that they had all sworn against him from revenge for prisoner's having, while in the Government service, ***tortured accused persons to induce confession.*** He added, ***he*** had arrested Sona Hajam, the approver witness, and Dolu Sirdar, (which was not the case.) This defence was well commented upon and entirely refuted by the committing officer in his English abstract of the grounds for commitment. Before me, the prisoner urges new matter, his defence being a very carefully ***written*** one. He states 1st, that Sona Hajam, witness No. 1, got the witness, Haranund No. 4, to go with him a month ago to Hooghly and to personate an old mohurrir of his, (prisoner's), and to pretend to recognise him. *Prisoner did not know this Haranund had previously and quite incidentally denounced him in July*, 1855; 2ndly, he urges the justice of sending for fresh evidence as to his good character in addition to that of the witnesses he named for examination in this court to the dacoity commissioner; 3rdly, he refers to a proceeding of the magistrate of Nuddea enquiring, in communication with the officer who has now committed him for trial, into his character, and declares the enquiry is incomplete; but any such enquiry was not warranted by any request that I can find from the dacoity commissioner; the prisoner has had the option of himself citing any witnesses he chose to speak to his prior reputation; and moreover the deputy magistrate at Kalaroa, at all events it would appear, mistrusted and thought ill of him; 4thly, prisoner says his writer or copyist was one Nobin, whom he has summoned as a witness, and not the witness, Haranund, and that his witnesses will prove this; 5thly, he asserts he really tried to capture

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Dolu Sirdar, ***though not succeeding in doing so***, and that the records in the Nuddea office will prove this statement. They have been called for and are not to be found; 6thly and lastly, the prisoner declares *he* it was who arrested the dacoits in the Sooltanpore case, and that he holds the darogah's acknowledgment to that effect. I find on examining the record that Sona, Dolu, &c., were none of them caught by the prisoner, while as to the darogah's "receipt" he has none to shew, and there is none on record.

I have examined four of the seven witnesses named for the defence, two being dead, and one unable to appear. The first No. 3, says nothing to clear the prisoner whatever as to his connection with dacoits, nor can any of them say how many or who were his "writers," though they know one of them, the witness Nobin. This Nobin No. 6, evidently a friendly witness, altogether breaks up the prisoner's 4th defensive plea and confirms the evidence of witness No. 4, for the prosecution. He says he *was* a private mohurrir in the Chandooreea pharee under prisoner, four or five years ago, having been in his service two or two and half years; ***but that he left him to go home sick five or six months before the Sooltanpore dacoity***, and did not return afterwards. The witness Haranund's* statement was, that *he* was prisoner's mohurrir three months before the dacoity and the witness, Nobin,† ***cannot say who succeeded him in the office.***

* No. 4, for the prosecution.

† Witness No. 6, for defence.

The charges brought against the prisoner seem to me completely and most satisfactorily established by a chain of irresistible and unimpeachable evidence; and taking all the circumstances into consideration, and the prisoner's position when he acted in the way he has been shewn to have done, I cannot recommend a less punishment for him than imprisonment for life with hard labor and irons in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner has been defended by Kishen Sukka Mookerjea. We have most carefully examined the proceedings referred to by the additional sessions judge as in his view supporting the evidence of the witnesses, who have now deposed against the prisoner. We find that the witness No. 1, was named at the time of the Sultanpore dacoity, as having been concerned in it; and the mention, that has been made at different times, of the prisoner's connivance at that and other dacoities, and participating in the spoils obtained by them, occurred in the statements of different parties under circumstances, which did not show a concerted object to denounce him. There is therefore no reason to distrust the evidence that has now been given on the trial; for such pre-

viou. mention of the part the prisoner took in connection with dacoits renders it quite credible.

We convict the prisoner of counselling and procuring the commission of dacoity and of sharing in plunder so obtained, and sentence him to imprisonment for life in transportation beyond sea according to Section 4, Regulation III. of 1805.

1856. September 4. Case of GOLUCK CHUNDER ROY JEMADAR.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT

versus

OMMED ALLY (No. 1,) AND MUSST. ANOSHEE (No. 2.)

Tipperah. 1856. September 4. Case of OMMED ALLY and another.

CRIME CHARGED.—Wilful murder of their infant child.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah, on the 10th June, 1856.

Prisoner No. 1, on his own confession convicted of the wilful murder of his infant child and sentenced capitally; though the body of the murdered infant was not found, still the presumption of its death was so cogent and irresistible as under the principle laid down in the case of Komar Ali *versus* Tofan Ali to warrant, in the court's opinion, the passing of a capital sentence

Remarks by the officiating sessions judge.—The prisoners are cousins and have been living together since the death of the husband of the female prisoner No. 2, Musst. Anoshee, which took place about five or six years ago. In the month of Phalgoon last, Musst. Anoshee was delivered of a daughter of which she stated that the male prisoner Ommed Ally was the father, and he acknowledged the child as his. The next day to put an end to the scandal, the villagers had them united in marriage, but they were ashamed to remain in the village and left it at night in search of shelter elsewhere. Fearful that they would find it difficult to obtain admission any where as long as they had the child with them, the male prisoner appears to have formed the project of getting rid of it, which he effected by taking it from its mother and throwing it into the river. The daughter of Musst. Anoshee, prisoner No. 2, was with them and witnessed the circumstance. She has been examined under the provision of Act II. of 1855, Section 15. Her evidence agrees with the statements made by the prisoners in their confessions, and may, I think, be relied on. These confessions are proved to have been voluntarily made and bear the appearance of having been so. They are indeed admitted by the prisoners to have been spontaneously made, and neither of the accused has attempted to urge any thing in their defence. Musst. Anoshee, prisoner No. 2, indeed pleaded guilty from the first. The law officer finds Ommed Ally, prisoner No. 1, guilty

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Case of OMMED ALLI and another.

Prisoner No. 2, convicted of being an accomplice to the above murder and on consideration that she was the wife of prisoner No. 1, sentenced to only 14 years' imprisonment with labor suited to her sex.

of the murder, and Musst. Anoshee, prisoner No. 2, guilty of aiding and abetting in it on strong presumption, but declares *kissas* to be barred by the Mahomedan law.

I agree in this finding, but consider that there is sufficient legal evidence, and that both prisoners are liable to capital punishment under Section 2, Regulation VI. 1802. Ommed Ally as the actual murderer and Musst. Anoshee as his accomplice. As regards the first named prisoner I regret I can see no grounds for recommending any remission c" the extreme penalty of the law. In the case of the female prisoner, it will perhaps be considered a sentence of imprisonment for life will be a sufficient punishment. The record of the case will be forwarded to the superior Court, and the prisoners, till the orders of the Court are received, will remain in confinement as at present.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The confessions of the prisoners are complete as to the crimes of which they severally are convicted. Prisoner No. 1, fully admits his having cast the child into the stream of the river Megna for the purpose of its destruction, for this he could scarcely have taken, considering the nature of that river, more certain or effectual means, and prisoner No. 2, admits having been present and consenting to the act. The body, after such a mode of destroying life had been adopted, could not possibly be found, and the grounds of presumption that death took place are so cogent and irresistible as to warrant capital punishment, according to the principle laid down in the case of Komer Allee *versus* Tofan Allee, which may be considered a leading one where the body in a case of murder is not forthcoming. We convict prisoner, No. 1, of the murder and prisoner No. 2, as accomplice, and sentence the first capitally as recommended by the sessions judge.

Taking into consideration all the circumstances and the relative position of man and wife existing between the prisoners, we consider that fourteen years' imprisonment with labor, suited to her sex, will be sufficient for prisoner No. 2.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND PET BEWAH

versus

GOBINDO GARROW (No. 8,) CHEKUN GARROW (No. 9,) CHURN GARROW (No. 10,) AND WASANG GARROW (No. 11.)

Mymensingh.

1856.

September 4.

Case of GOBINDO GARROW and others.

Certain Garrows convicted of dacoity with murder: two sentenced capitally, and one transported.

CRIME CHARGED.—Dacoity in the house of Deroo Rajbunshee and plundering therefrom cash Rs. 10, and property consisting of brass *lotah*, *battee*, *bagoonah*, also a *lotah* of mixed metal, a *dao* and *cassa thal*, to the value of Rs 2-12; killing Deroo, Sheeb Churn and Shoroop Rajbunshees, and setting fire to their homestead.

Committing Officer.—Mr. W. Cockburn, deputy magistrate of Jamalpore.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 19th June, 1856.

Remarks by the sessions judge.—The prosecutrix, Pet Bewah, is the widow of Deroo, one of the men killed; she deposes that on a Sunday, about four months ago, she went to see her daughter; that on the day following when she returned to her house, she learnt from her husband that five Garrows attacked the house on the night preceding, and murdered her cousin, Shoroop, and her son-in-law, Sheeb Churn, with blows of a *chengdah* or spear and wounded him (Deroo) on the chest, and that the assailants having plundered their property, consisting of brass utensils and cash Rs. 10, set fire to their houses. She further states that her husband, Deroo, died some ten days after the date of the commission of the outrage.

At first no clue was obtained as to who were the perpetrators of the crime, but subsequently it having been brought to the notice of the darogah that the prisoners and one Shangring Garrow (who made his escape from jail) were found going together, suspicion fell on them and they were accordingly apprehended.

Before the police, prisoner No. 8, admitted the crime, and stated that prisoner No. 11, wounded Deroo on the chest with a spear, and No. 10 on the foot with a *deggree*, an instrument having the appearance of a cutlass, and that Shangring (who has since made his escape from jail) and No. 11, inflicted several blows with a spear on two other persons while asleep, and that No. 10, with a *deggree* and he with a *lattee* repeated the blows on them, which caused their immediate death,

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and that No. 9, set fire to the house, and that they divided the spoil among themselves. Before the deputy magistrate, he stated that he struck Deroo several blows with a *lattee*, and No. 11, wounded him on the chest, and that Shangring and prisoners Nos. 10 and 11, killed the two other persons with a *deggree* and spear. No. 9, urged before the police that prisoners Nos. 10 and 11, wounded Deroo with a spear and *deggree*, and that he aimed a blow with a *lattee* at Deroo, which fell on the *tattee*, and the prisoners Nos. 8, 10, 11, and Shangring, killed the two other persons. Before the deputy magistrate, he stated, that he only set fire to the house, and that the other prisoners killed and wounded the murdered persons. The confession of prisoner No. 10, was similar to that of No. 8, with this little variation that prisoner No. 9, also struck Deroo with a *lattee;* No. 11, urged both before the police and the deputy magistrate that he was forced to accompany the other prisoners, and that he and Churn were standing outside; that he did not participate in the murder or plunder which the other prisoners did, and that he did not receive any share of the spoil. In this court, the prisoners one and all denied the charge, and stated, that they did not confess before the police or before the deputy magistrate, and that Monglah Garrow interpreted their statement before those officers incorrectly. No. 8 added, that the *lotah* he gave up was his own property. No. 10 urged, that his name is Dengring, and that Monglah Garrow pointed him out to the police as being the person who went by the name of Churn, but none of the witnesses examined in the case deposed to his being known by that name. No. 11 stated, that in the month of Aghun last he went to Shangring and Chekun Garrow's house, to recover a sum of money which they owed him, but since that time he has never again been in their house, which he stated his witnesses would prove.

The civil assistant surgeon, who examined the bodies of the abovenamed parties, states that Seeb Churn's death was caused by a wound on the right side of the neck, dividing the carotid artery; that the skull was fractured in two places, and there were wounds in the abdomen as if punctured by a spear, and that his hands and feet were very much burnt; that more than half of the body of Shoroop was burnt to a cinder, and was also in too great a stage of decomposition to enable him to ascertain the exact cause of death, but that there appeared marks of violence on the part of the body, which was not destroyed by fire, and that there was an extensive wound in the abdomen through which the viscera protruded, and that the skull was fractured in front. With regard to Deroo, he stated that he was unable to account satisfactorily the cause of death, his body when sent to the station for examination being in a very advanced state of putrefaction; that his hands and feet were

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partially destroyed by fire, and that there was an incised wound on the right side of the chest, and that he might have survived some days after the injury, and that he could have been recovered if he had been subjected to proper medical treatment, if the lungs had not been affected.

This is a very serious case, and although there are no eye-witnesses to the murder or plunder having been committed by the prisoners, yet their confessions before the police and the deputy magistrate, corroborated as they are by the testimony of the subscribing witnesses, leave no room for doubt. They deny in this court having committed the outrage or having confessed before the police or the deputy magistrate, and state that their statements were incorrectly interpreted by Monglah Garrow, but it is to be remarked that their confessions before the deputy Magistrate were interpreted by Bakherdee Garrow, who was the interpreter of the Garrow language in this court and nothing has been said against his veracity. It also appears from the evidence of witnesses, Nos. 1, 2, 3, 4, 5, 28 and 29, that the articles found with the prisoners, Nos. 8, 9 and 10, were given up by them as being the plundered property, and which have been clearly identified and proved to belong to the murdered persons by witnesses, Nos. 18, 32, 33 and 34. Again witness No. 42, Urjoon Garrow, stated that when returning from work from the hills, he saw Shangring Garrow and prisoners Nos. 8, 9 and 10, passing through the jungle, and that they concealed themselves when they saw him, which raised much suspicion against them. The attack was of the most wanton character attended with the murder of no less than three persons, and the prisoners stated in their confessions, before the deputy magistrate, that the robbery was premeditated, having visited the deceased's house in the day-time and afterwards remained in the jungle until the fitting opportunity arrived, and they also stated that the cause for the commission of this inhuman outrage was to possess themselves of more property which the deceased persons might have concealed. Under the above circumstances, being of opinion that the charge of dacoity with wilful murder has been clearly proved against the prisoners, I convict them of the same, and recommend that prisoners Nos. 8, 9 and 10, be sentenced capitally, and No. 11, who does not appear to have taken so active a part in the outrage as the rest, to transportation for life beyond sea with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) We have most carefully examined all the proceedings in this case. The crime appears to have been committed solely for the sake of plunder. The police followed up the first clue they obtained, very skilfully and perseveringly, until they traced the crime to the prisoners.

Every step in the enquiry which led to their apprehension,

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the disclosure of the plundered property, which was identified, and the eventual confessions of the prisoners are all strong connecting links in the chain of evidence; and leave no doubt of the prisoners' guilt.

The confessions proved by the attesting witnesses are natural and consistent throughout; and not only consistent in themselves, but with a few very slight immaterial differences, consistent with each other.

The prisoners, in their defence before the sessions judge, state that their confessions were incorrectly interpreted by Munglah Garrow, whom they accuse of enmity. There is no evidence to substantiate such a charge; and on referring to the record, we find that the confessions before the deputy magistrate were interpreted, as stated by the judge, by Bakerdhee Garrow, and not by Munglah Garrow; and that Bakerdhee Garrow interpreted also the confessions before the police, and was assisted only by Munglah Garrow in one confession that of the prisoner Churn Garrow.

The property discovered consists only of a few brass utensils and an iron *dao*, without a handle; but from the first report of the darogah, and the statement of the prosecutrix, it appears that this was all the property that was plundered, with the exception of 10 Rupees in cash; and we gather from the confessions of the prisoners, that this was all the property they took; although they expected a larger share of plunder.

We concur with the sessions judge in convicting the prisoners of dacoity with wilful murder; and seeing no just cause for remitting the extreme penalty of the law for so wanton a sacrifice of life, pass sentence of death on the prisoners, Gobindo Garrow, Chekun Garrow, and Churn Garrow; and on the grounds recommended by the sessions judge, sentence the prisoner Wasung Garrow to transportation for life beyond sea with labor and irons.

PRESENT:
E. A. SAMUELLS AND D. J. MONEY Esqs.,
Officiating Judges.

GOVERNMENT
versus
PEYLARAM JANA (No. 8,) GYRAM HARAH (No. 9,) PEYLARAM BAR (No. 10,) AND GOVIND SAWANT (No. 11.)

Midnapore.

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Case of PEYLARAM JANA and others.

Prisoners being professional dacoits, were transported.

CRIME CHARGED.—1st count, dacoity in the house of Sisteedhur Paul of thannah Kulmijole; 2nd count, dacoity in the house of Oodoychand Pandah master of Mudhoo Manna of thannah Pertabpore; 3rd count, dacoity in the house of Cheedam Manjee of thannah Kulmijole; 4th count, No. 8, dacoity in the house of Parry Bewah and her daughter Shahee Bewah of thannah Musnundpore; No. 9, dacoity in the house of Ram Sodoy Bhookta of thannah Kulmijole, and Nos. 10 and 11, being by profession dacoits and having belonged to a gang of dacoits under Sirdars Muthoor Sein and others (convicts) and 5th count, Nos. 8 and 9, being by profession dacoits and having belonged to a gang of dacoits under Sirdars Muthoor Sein and others (convicts.)

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 19th June, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty*. Five approver witnesses are produced in this case who swear to the identity of the prisoners, and denounce them as accomplices in the various dacoities with which they are charged. The other witness Muthoor Sein No. 2, is dead. The confession he had made is proved by the witnesses Nos. 7 and 8, as far as regards the dacoities committed in the houses of Sishteedhur Pal, Oodoychand Pandah and one Kieburt. The depositions subsequently made by him, pointing out Peylaram Jana prisoner No. 8, Gyaram Harah prisoner No. 9, and Peylaram Bar prisoner No. 10, as the parties whom he had named in his confession, is proved by the evidence of the sheristadar who wrote it. It was given when the approver was seriously ill, and he died about three weeks after.

The records* of the five dacoity cases charged have been laid before the court.

In that of Sishteedhur Pal's dacoity No. 503 on 4th May, 1853, his brother Lukheenarain

* Nuthee No. 503, dacoity in the house of Sishteedhur Pal brother of Lukhee Pal.
Nuthee No. 549, dacoity in the

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house of Oodoychand Pandah master of Mudhoo Manna (plaintiff).

Nuthee No. 98, dacoity in the house of Cheedam Manjee.

Nuthee No. 337, dacoity in the house of Pary Bewah and Shabee Bewah.

Nuthee No. 672, dacoity in the house of Ramsodoy Bhookta.

opposed the dacoits and seized Gyaram Harah, whom he knew previously but he was recaptured by the dacoits. On Kalleedoss Roy phareedar's information, one Ruttun Jana was apprehended, and in his confession in the mofussil taken on the 9th May, 1853, which he repeated before the magistrate on the 10th idem, implicated prisoner No. 8, Peylaram Jana, prisoner No. 10, Peylaram Bar, prisoner No. 9, Gyaram Harah and prisoner No. 11, Govind Sawunt, he also named ten other men among whom were one Boikunt Sawunt and Muthoor Sein witness No. 2, (deceased) of this trial. Boikunt Sawunt in his confession, taken on the 10th May, 1853, by the police, implicates all the four prisoners; they were arrested but denied the charge. The prosecutor and his brother suspected Peylaram Jana on the ground of his being a bad character. Ruttun Jana, Boikunt Sawunt, and Gyaram Harah prisoner No. 9, Peylaram Bar No. 10, and Notobur Sawunt were sent in by the police to the magistrate, the others were released on bail.

From the record of case No. 549, dacoity in Oodoychand Pandah's house which occurred in the village of Bizoo on the 27th September, 1853, it appears one Peyloo Rana servant of one Romanath Gosain gave information that Nobeen Taylee, Muthoor Sein, deceased witness No. 2, his two sons, Tarachand Chuckerbuttee, Mudhoo Leekha, witness No. 4, of this trial, had committed the dacoity and were seen going over the *maidan* by Thakoordoss Mundul. That they also committed a dacoity in the house of a Poddar at Maisa Dhul; Muthoor Sein was arrested on 1st October, 1853, confessed the following day and named Bindabun Mytee witness No. 3, of this trial, Gyaram Harah prisoner No. 9, Peylaram Bar prisoner No. 10, Govind Sawunt prisoner No. 11, and Mudhoo Leekha aforesaid witness No. 4, and Moocheeram Dhoba witness No. 5. Moocheeram Dhoba Tantee was then arrested and confessed on the 4th October, 1853, implicating witness No. 2, Muthoor Sein (deceased,) six other men noted in the margin* were arrested in this dacoity and between the 2nd and 7th of the month confessed, implicating Muthoor Sein, Gyaram Harah prisoner No. 9, Govind Sawunt Kiburt prisoner No. 11, Bindabun Myttee, Peylaram Bar.

* Nobeen Myttee.
Biper Das.
Narain Muna.
Gudadur Pater.
Premchand Korunga.
Bindabun Doloee.

In the record of case No. 98, the dacoity in Siddam Manjee's house which occurred on the 22nd March, 1854, none of the prisoners are named, but one Mudon Doba was sentenced to seven years' imprisonment, whereby no doubt remains that a

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dacoity was committed as deposed to by Mudhoo Leekha, witness No. 4.

The record of case No. 337, an alleged dacoity in the house of Patty and Shabee Bewah, shows that no dacoity was actually committed, that it was a false alarm, and the case was dismissed.

From the record of case No. 672, it appears a dacoity took place in the house of Ramsodai Bukta on 7th December. 1852, Muthoor Sein and others, being seized, were released by the police; other prisoners, after enquiry by the magistrate, were also discharged.

The evidence of the approver witnesses is fully corroborated by the record of the cases (excepting the *nuthee* No. 337.) The witness Mocheeram Dhoba, owing to his gross contradiction in the matter of his recognition of Peylaram Bar, as shown in his evidence before the committing officer and this court, is not to be trusted. Excluding his evidence from consideration, there still remains that of the other witnesses which there is no reason to doubt. There is nothing proved in their defence to exculpate the prisoners, and I, therefore, convict them of having belonged to a gang of dacoits and would recommend that they be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The records of the cases referred to by the sessions judge, and the evidence of the approvers, who identify the prisoners as their accomplices in dacoities, which they committed in concert, leave no doubt upon our minds of the prisoners having belonged to a gang of dacoits. We therefore concur with the sessions judge in their conviction, and as recommended by him, sentence the prisoners to transportation for life.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT

versus

AURIP SIRCAR (No. 1,) SHOROOP SIRCAR (No. 2,) MOKY DAGGEE (No. 3,) MONYE MUNDUL (No. 4,) GOOMANY KARRIGUR (No. 5,) BHOWANY BAGCHY (No. 6,) ALLUM PRAMANICK* (No. 7,) CHAMAROO MUNDUL (No. 8,) NAZIR KARRIGUR (No. 9,) MICHOO MUNDUL (No. 10,)* BULLORAM PAUL (No. 11,)* AND JHOROO, POLICE CHOWKEEDAR (No. 12.)

Rajshahye.

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Case of CHAMAROO MUNDUL and others.

Certain persons charged with taking part in a riot with murder released on insufficiency of proof. Conviction of other parties upheld.

CRIME CHARGED.—Nos. 1 and 2, 1st count, wilful murder of Babon Sirdar; 2nd count, riot in which Babon Sirdar was killed and Soobul, Police Chowkeedar, Haradhun Mundul, Koobeer Sirdar, and Tumezoody Peadah, were wounded; attended with resistance of collector's process. Nos. 3 to 11, being accomplices in the above 1st and 2nd counts. No. 12, being an accessary after the aforesaid crimes.

Committing Officer.—Baboo Gopal Lall Mitter, deputy magistrate of Nattore.

Tried before Mr. Lowis Jackson, officiating sessions judge of Rajshahye, on the 23rd June, 1856.

Remarks by the officiating sessions judge.—The ground of this reference is the conviction by *futwa* of prisoner No. 8, *Chumaroo*, upon what seems to me insufficient evidence.

The prisoner is identified by only two witnesses in this court, out of four who deposed against him before the deputy magistrate, whilst the statement shows that he was not mentioned at all before the mofussil police.

Under the circumstances of the case (as detailed in my remarks on the conviction of certain other prisoners) I am not satisfied with this proof, and being, therefore, unable to concur in the law officer's finding, I submit the record to the superior Court for their decision in regard to the prisoner specified.

P. S.—I submit the detailed remarks and entire record at once, because the prisoners convicted in conformity with the *futwa* are pretty certain to appeal, and time will therefore be saved by sending up the papers now. Detailed remarks.

Jhoroo Chowkeedar of Seebpore came to the Nattore thannah and made a deposition before the mohurrir in charge, to the

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* Acquitted by the sessions judge.

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effect that certain ill-disposed persons had made an attack that morning early upon the house of Aurip Sircar of Duttpara, a *tehsildar* of his landlord; that they had been beaten off by the villagers, leaving behind two of their number, who had been (in some way) so much injured that their recovery was doubtful.

Shortly afterwards *Koovir Sirdar* appeared at the thannah and deposed, on the other hand, that two collectorate peons accompanied by himself and others had gone that morning at day-light to serve a writ in a Regulation VII. case upon the said Aurip; that they had effected their capture, but that Aurip and his brother had raised the villagers, wounded and driven off the party and had then got two of their number in custody.

In the course of the morning, Bhowani *Bagchy* (under whom Aurip was *tehsildar*) also called at the thannah to corroborate Jhoroo's story, but did not make any deposition.

The mohurrir proceeded to the spot some four or five miles from Nattore, and on reaching Aurip's house about 11 o'clock A. M. found him and his brother at home, with one of the alleged assailants tied hand and foot, on the premises, and also discovered the headless trunk of a man close by.

The brothers now declared that a dacoity had been committed, that cash and other goods had been plundered; that the headless body was that of a stranger, whom they did not know, but who had slept in the house that night and whose head the dacoits had cut off, the person bound they said was one of the dacoits.

This person, however, named *Soobul Sirdar*, on being questioned, repeated Koober's story with the addition that after the deceased (Babon Sirdar) and himself had been carried to Aurip's house, Babon being then in a dying state from the ill-usage he had received, had asked for a little water, upon which Aurip had struck him a final blow on the head, on which he died immediately; that after this, the brothers and some of their confederates with the view of preventing recognition of the body, had cut off, and made away with the head. He also stated that on calling for water himself, one of the confederates, whose name he did not know, had brutally made water into his mouth.

The story of dacoity was soon ascertained to be altogether without foundation, and presently the peons and others of the party who had run away, made their appearance and confirmed Soobul Sirdar's tale, except, of course, the concluding part to which they had not been witnesses. A number of persons were named and apprehended (the mohurrir on his arrival found the village deserted)—the trunk (of which the head was never found, though careful search was made) was forwarded to the sudder station, not however, before it had been identified by certain marks by the wife and son of the deceased. The abovenamed

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Bhowany Bagchy, was among others mentioned as having been one of the instigating parties, and after his apprehension, he was identified by Soobul as the individual who had committed the brutality above mentioned.

The enquiry was commenced by the mohurrir as aforesaid, continued by the deputy magistrate's nazir, that functionary himself paying a visit to the spot, and completed by the darogah, who, in the first instance, had been absent.

The investigation certainly was not hurried, and twelve prisoners were committed for trial on the 31st of May, exactly three months after the occurrence of the outrage; the twelfth prisoner being Jhoroo chowkeydar first mentioned, who stands committed on a charge of being accessary to the offence after the fact.

The calendar gives no less than twelve witnesses to the fact, all of whom were examined, except Shajun Sircar, No. 7, who was reported dead. The comparative statement, which accompanies the record, shows the extent to which their evidence bears against the several prisoners.

Much the most important evidence is that of Soobul chowkeydar, No. 1, as he was a witness of the whole occurrence from beginning to end, he is entitled to say:

"*Quæque ipse miserrima vidi, et quorum pars magna fui.*"

Unfortunately his evidence cannot be altogether relied upon. It differs in some important particulars from his first statement before the police mohurrir, and even if allowance be made for his exhausted and confused state at that time, yet there is evidently much of party-spirit that disfigures and marks his story.

The statements of the two peons, witnesses Nos. 4 and 5, are still more worthless; they abound in contradictions, and clearly do not reveal the whole circumstances.

Altogether, I see much reason to distrust the evidence as to details, the leading facts prove themselves, and the following are the points which I consider satisfactorily established.

1st. The identity of the deceased, whose headless trunk was found, as being Babon Sirdar, husband of Jotun Bewah, witness No. 28.

2nd. The attempt by deceased and others to arrest Aurip Sircar upon a writ under Regulation VII. of 1799.

3rd. The repulse of that attempt by force and arms on the part of Aurip and his friends, accompanied with aggravated assault upon the deceased and Soobul, witness No. 1, and less violent assault upon witnesses, Nos. 2, 3, 4 and 5.

4th. The presence of *Aurip* and *Shoroop*, his brother, prisoners Nos. 1 and 2, as actively directing and taking a part in the business.

That of Bhowany Bagchy, No. 6, as also active in urging on and encouraging the rioters.

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That of Moky Daggee, No. 3, Monye Mundul, No. 4, Goomany Karigur, No. 5, and Nazir Karigur, No. 9, as having been concerned more or less actively, but in a subordinate degree.

5th. The capture and detention of deceased and witness, No. 1, on the premises of Aurip, with the death of the former followed by his decapitation.

The leading fact upon which the evidence leaves this court in doubt, is the precise and immediate cause of Babon Sirdar's death. If the testimony of witness, No. 1, could be implicitly believed, the matter would be clear enough, but besides that, his statement appears in itself improbable; it appears from the medical evidence (Dr. W. Craddock) that on *post mortem* examination, the spleen was found diseased and ruptured, in consequence of which death would probably have resulted in a few minutes; that there was a bruise, as if from a heavy blow visible on the lower left side of the chest which from its position might very probably indicate the injury, which caused the rupture; that there were several other marks of violence on the body; that although in the absence of the head no positive statement could be made as to the immediate cause of death, yet that in all probability the rupture of the spleen was the mortal injury.

The history of the case, therefore, as it seems to me upon the evidence, is this :—

That a suit under Regulation VII. of 1799 had been laid in the Pubna collectorate against Aurip Sircar, and process issued for his apprehension.

That, as happens every day, the suit was fraudulent, and originated in enmity between Aurip's landlord and some of his neighbours.

That the peons and their party made a desperate effort to seize Aurip.

That the latter and his friends being aware of what was intended, and very likely conscious that the claim against him was unfounded, determined to repel force by force, and had his friends assembled for that purpose.

That in the scuffle, which ensued, the deceased, Babon Sirdar, received a blow, or had a fall which ruptured the spleen;—and that he consequently died on Aurip's premises.

That, alarmed at this event, and having little time for consideration, Aurip and his friends, in the hope of preventing identification, cut off the head of deceased and trumped up the story of dacoity to mislead the police.

The law officer, taking also this view of the case, convicts the prisoners already mentioned, with the addition of Chamaroo, prisoner No. 8; in which latter instance, I am unable to concur with his finding, and the case must therefore, as regards this prisoner, go before the Court of Nizamut Adawlut.

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Prisoner No. 12, Jhoroo, being a police chowkeydar, undoubtedly made a false statement at the thannah, with a view to hide the actual state of the case, and in concurrence with the law officer's *futwa*, I convict him of privity and concealment of the facts with intent as above stated.

Sentence passed by the lower court.—Nos 1, 2 and 6 each to five years' imprisonment with labor, No. 6, with hard labor. Nos. 3, 4, 5, and 9, each to three years' imprisonment without irons, and to pay a fine of 100 Rs. on or before the 8th of July next, or in default of payment to labor until the fine be paid or the term of their sentences expire. No. 12, one year's imprisonment without irons, and to pay a fine of 25 Rs. on or before the 8th July next or, in default of payment, to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) This case has been referred by the sessions judge owing to his difference of opinion with the law officer, who would convict the prisoner, Chamaroo No. 8, whilst the judge considers the evidence against him to be insufficient. We agree in opinion with the sessions judge. None of the witnesses examined, named this prisoner in their statements before the police; those who had not named him there, did so before the magistrate and one only before the sessions judge. We consequently direct his immediate release.

Four of the other prisoners, convicted for the same affray before the sessions, have appealed, and their appeals have been heard along with the referred trial. We see no reason to differ from the views of their guilt taken by the sessions judge and his law officer and confirm the sentences passed. With reference to Section 6, Clause 4, Regulation IX. of 1831, and the sessions judge's letter of the 10th of July, No. 37, in order to correct the inadvertence on his part which he points out, we direct that he will recall the warrants issued by him and renew them in conformity with the law above quoted deducting from the period of sentence the time prisoners have been in jail since the first warrants issued.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
PERSAUD SANKEE (No. 15,) AND KISSORE SANKEE (No. 16.)

Midnapore.

1856.

September 5.

Case of PERSAUD SANKEE and another.

Prisoners convicted of having been professional dacoits. On account of their age, and the length of time which had elapsed since they had desisted from the practice of dacoity, the penalty of transportation was remitted by the Executive at the instance of the Court; and they were confined for life in jail.

CRIME CHARGED.—1st count, dacoity on 4th May, 1855, in the house of Muddunmohun Udhicaree of thannah Puddoobussan; 2nd count, dacoity on a certain day in the month of Cheyt 1241 or 1242, in the house of Goluck Takoor, deceased, of thannah Puddoobussan; 3rd count, dacoity on 27th July. 1837, in the house of Kummul Paroee of thannah Puddoobussan; 4th count, being by profession dacoits and having belonged to gangs of dacoits under Sirdars, Moocheeram Khaurah, Soondur Kamar and others.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 3rd July, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty* and cite witnesses for the purpose of showing that they were good characters and obtained an honest livelihood, but the evidence of these witnesses* does not in any degree exculpate the defendants. They, the witnesses, can speak only to very recent times. Three of them are related more or less closely to the prisoners, and one mentions the apprehension of prisoner No. 15, Persaud Sankee, in a dacoity in Monabuddeen's house, not charged in the calendar.

* Wit. No. 8, Goopee Mytee.
" 9, Doorgachurn Mundul.
" 10, Bungshee Aduck.
" 11. Mudhoo Jana.
" 14, Lochun Saont,
" 15, Dabee Mytee.

The evidence for the prosecution consists of the depositions of four approver witnesses, who swear to the identity of the prisoners and denounce them with having been accomplices in the dacoities on which they are arraigned, and further with having belonged to the gangs mentioned in the 4th count of the charge.

In corroboration of the testimony of these witnesses the papers noted in the margin† have been laid before the Court.

The original record of the dacoity which occurred in Muddun Udhikaree's house was transmitted to the court of Sudder

† Nuthee No. 703, defamation of character, Rajah Lukheenarain Roy plaintiff *versus* Muddun Udhikaree defendant, also the proceedings in the recent investigation in the case.

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Case of PERSAUD SANKEE and another.

Papers No. 1, dacoity in the house of Goluck Thakoor.

Nuthee No. 105, dacoity in the house of Komul Paroee.

Dewanny Adawlut attached to the record of an action brought by Rajah Lukheenarain *versus* Muddunmohun Udhikaree for defamation. Only copies of these papers are producible and they shew that a dacoity took place as stated. To leave no doubt on this head, three witnesses* have been cited for the prosecution. I have not recorded the evidence of the first of them, as from a previous trial in which he was summoned,† it appeared he was a mere child when the crime was committed, and could only speak from hearsay. The two other witnesses were both wounded on the occasion and fully substantiate the fact.

* No. 5, Lukheenarain Udhee'aree.
,, 6, Shamutullah.
,, 7, Ramgopaul Udheekaree.

† Government *versus* Anundee Jana.

In the 2nd dacoity charged, which occurred in the house of Goluck Thakoor, about twenty years ago, no old record is forthcoming. A recent enquiry made by the police would lead to the belief that information of it had been suppressed at the time.

In the third case charged against the prisoners, viz. the dacoity in the house of Komul Paroee in Neemtoree, there is found, in the record, ample corroboration of the evidence given by the approver witnesses. In this case, Soonder Kamar and Urjun Chowdhoory were arrested in the suspicion of the plaintiff and on the 3rd August, 1837, confessed; the first implicating Kishore Sankee prisoner No. 16. Bindabun Mytee, witness No. 1, of this trial and Moocheeram Khara No. 4, of ditto; the second also implicating the same parties. Neemaee Kundar, sentenced by the Court of Nizamut Adawlut to transportation for life on the 15th February, 1856, was also arrested in this case, being a bad character. His house was searched and property found and he then, on 4th August confessed, implicating Pershad Sankee prisoner No. 15, Kishore ditto, prisoner No. 16, Soondur Kamar, Urjun Chowdhury, Bindabun Mytee, the witness No. 1, Pershad Khara, witness No. 2, Moocheeram Khara, witness No. 4.

Thus the evidence of the four approver witnesses is fully corroborated. Every one of them, but witness No. 3, Koochul Jana, is mentioned by the confessing prisoner or prisoners of that time, viz. 1837, as are also the two prisoners, Pershad and Kishore Sankee. There is no room left to doubt the evidence of these witnesses, and I, accordingly, convict the prisoners of having belonged to a gang of dacoits, and would recommend that they be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) We concur with the judge in considering the guilt of the prisoners fully established. There

is no cause for doubting the testimony of the approver witnesses, confirmed as that testimony is by the facts found on the records of the cases of dacoity, and we therefore sentence the prisoners, as recommended by the judge, to transportation for life.

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But in passing this sentence, we think it right to bring to the notice of the Lieut.-Governor, that one of these prisoners is eighty and the other sixty years of age, and that twenty years have elapsed since the commission of the dacoities on which the charge against them is founded. It will be for his Honor to consider whether, under the circumstances, it is necessary that their sentence should be carried out to its full extent. We direct therefore that a copy of this decision should be submitted to the Lieut.-Governor for his consideration and orders on the point to which we have adverted.*

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MODOOSUDUN KOLLEH.

Hooghly.

1856.

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Case of MODOOSUDUN KOLLEH.

Conviction of perjury upheld. The prisoner's pleas that the court had no authority to call him as a witness, or to put him on oath, expecting him to deny a previous statement on oath, overruled.

CRIME CHARGED.—Perjury, in having on the 1st February, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. K. H. Stephen, deputy collector of Serampore, to the effect that on the 17th *Srabun*, 1262, B. S., he paid to Issur Chunder Chuttopadhya, tehsildar of the talookdar, Co.'s Rs. 49 as *khazana*, on account of several *prejahs*, viz.: for Shiboo Santra Rs. 4, for Goluck Santra Rs. 4-8, for Shitanath Santra Rs. 5, for Radhanath Santra Rs. 5, for Gopal Khara Rs. 8, for Sreemunt Kolleh Rs. 14, and for Kobil Santra Rs. 8-8, total Rupees, 49, and took from him (tehsildar) seven rent bills, and debited the above amount in his *khata*, or account-book; and in having on the 22nd February, 1856, again intentionally and deliberately deposed, under solemn declaration taken instead of an oath, before the said deputy collector, that he *did not* pay to Issur Chunder Chuttopadhya Co.'s Rs. 49, the amount of *khazana* of these *prejahs*, and did not debit the sum in his account-book; that he paid his own rent only rupee 1, and said, that he gave false evidence on the day previous, at the instigation of Obhoy Napit; such statements

* In consequence of this reference, the prisoners were remitted the sentence of transportation, and confined for life in jail.

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Case of MODOOSUDUN KOLLEH.

being false and contradictory to each other on a point highly material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 7th May, 1856.

Remarks by the additional sessions judge.—The prisoner was a witness for the defaulter in a suit for the recovery of arrears of revenue before the deputy collector of Serampore, (which was finally decided after the order for his commitment for perjury), and on the 21st February last, deposed on solemn affirmation, that he had paid his landlord's tehsildar, for himself and others, rent to the amount of 49 Rupees, for which he held that officer's receipts. He was required to produce his vouchers and the ledger or account-book, in which he stated he had debited the tehseeldar with the sum so paid, when the next day he appeared to be re-examined and declared his deposition of the previous day to be untrue, 1 rupee, and that for himself, being all that had been paid by him. When on his defence on a charge of perjury before the deputy magistrate, he repeated the above confession, viz. on 3rd March, 1856, and was most properly committed for wilful perjury in a matter material to the issue of the summary suit for rent, in which he appeared as a witness.

Before me, the prisoner denies he committed perjury on 21st February, but says his denial on oath on the 22nd February of his previous statement (also on oath) of the 21st was false, and that he then perjured himself for fear of the plaintiff in the suit, who had come to his house, the night he made his first statement, and induced him by threats to retract it. He has, however, not cited a single witness.

In concurrence with the *futwa* of the law officer, I convict the prisoner of the crime charged, and sentence him to three years' imprisonment with labor and irons.

The committing officer has omitted in this case to give a succinct history of the case in which the perjury is alleged to have been committed, as he was bound to do; he has left me to find out, as best I might, whether the order for an indictment for perjury by himself as deputy collector preceded or followed the disposal of the suit for rent, and he has, without any apparent reason, caused this trial to be postponed for three months by not formally committing it for thirty-two days. The false deposition was made on 22nd February, the commitment to the sessions on 26th March, 1856, and from beginning of February to 10th March I was holding sessions at Hooghly daily, and could any day have disposed of the trial.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner has appealed. He

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appointed a mokhtear to conduct his case, but that individual is not in attendance. The prisoner does not deny the fact of having made contradictory statements, and urges that he was not a witness named by either of the parties in the pending cause, but was called by the court, and that the court should not have examined him on oath the second day, when it had become aware that he had given a false deposition on the preceding day. As regards the first plea, the court was quite competent to summon him, and as regards the second, it had no reason to suppose that the prisoner was about to deny his previous statement. He was therefore properly put upon his oath. We reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MADHUB BAGDEE.

Hooghly.

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The prisoner was convicted of having belonged to a gang of dacoits.

CRIME CHARGED.—1st count, dacoity, on the night of the 11th October, 1850, in the house of Ramdhun Soor of Bhuddessur, thannah Boidobattee, zillah Hooghly; 2nd count, dacoity, on the night of the 23rd August, 1852, in the house of Deybee Churn Ghose of Simlah, thannah Hooghly, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 3rd June, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with two specific dacoities, and with having belonged to a gang of dacoits.

To each of these dacoities there is only the direct evidence of one approver witness. The first witness, Manick, confessed to the dacoity at Bhuddessur (in October, 1850,) on the 9th June, 1853. He then implicated the prisoner and thirteen others. Before me he can only remember the names of six of these fourteen including the prisoner again; but he can remember, which he did not before, two persons named Chintamoni Kowra, and Ishwar Bagdee. Chintamoni Kowra has died in jail, and Ishwar Bagdee been transported since the confession. In cross-examination the witness has related the incidents of the dacoity as in his original confession.

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Case of MADHUB BAGDEE.

In corroboration of the testimony of this approver with regard to prisoner's participation in the dacoity, there is as follows:— On 25th March, 1851, there was a dacoity at Singoor, which one Bonomalee Pal, who is now, I have ascertained, dead, confessed having been concerned in on the 7th April, 1851, saying the same dacoits (prisoner and approver witness being of them) committed this who had committed the Bhuddessur dacoity. There is no further evidence on this count, and it is of course in all cases as well that there should be the additional and concurrent testimony of a second witness; but conviction can, I think, follow even the testimony of one abandoned witness like this approver, where there is found to have been at the time the coincidence I have just related; where he has been tolerably consistent; and where it is his interest to speak the truth.

On the second count too, the dacoity at Simlah, on the night of 23rd August, 1852, there is only the evidence of one approver witness Nobin Dooley, who confessed to this dacoity on the 11th December, 1853. At that time he named twenty-three accomplices, but, before me, can only remember thirteen. But he adds a new name, that of Ishwar Bagdee, who was transported before his confession. This in itself is somewhat strange, and on referring to the evidence of the other approver in the other dacoity still more so. Still there would seem to be no object for the two witnesses to have colluded now to denounce this one man. The witness adds that he has implicated this Ishwar Bagdee in some other dacoities, viz. those at Moolajoy, Panpoor, Batpara, Telinipara, Dagoon and Nobingram. I find he did so in three of them, but as to Telinipara, I cannot find that he has ever confessed having been himself concerned in it. I have found it necessary to go at greater length into this witness's statement, as he is unsupported by other direct evidence; but he has given the particulars of the Simlah dacoity consistently throughout.

The confirmatory evidence against the prisoner, on this count is this. The chowkeedar of the village (who cannot now be found I am told) gave information at the thannah on 24th August, 1852, the very day after the dacoity, that he had seen the prisoner and a person of the name of Tincowree Haree, (who has, however, not been denounced by the approver witness,) hovering about the village some days before the dacoity; and the darogah (in a report dated the next day) reported the prisoner's absence from his village on service at Omaishpore, and *his being an associate of the Chundernagore gang of dacoits.* Four days later, on 29th August, 1852, the same darogah further reported that he had strong grounds for suspecting the prisoner and others whom he named (*some of whom the approver witness long after denounced in his confession*), had perpetrated the offence. Amongst these so named, the approver witness was, I feel bound to remark, not one. All this I look upon as strong

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corroboration of the one approver witness's testimony; and at the end of 1852, the prisoner was, I find, in custody for want of security for future good conduct.

There is no separate evidence on the general charge; but the approver witness, Manick Bagdee, declares the prisoner was a regular member of Dhurrumdoss Bagdee's gang in which he committed with him six dacoities; while the 2nd approver was associated with him in the dacoities already detailed in Satcowrie's gang. This Dhurrumdoss Bagdee was transported for life on 25th January, 1856 (vide Sudder Nizamut Adawlut Reports, page 213).

Before the dacoity commissioner, the prisoner's defence was that he and the approver Manick cohabited with and quarrelled about the same woman, in itself almost a *proof of association;* and I observe Dhurrumdoss in his defence, with respect also to the Bhuddessur dacoity, refers to the same woman as the cause of his quarrel with the same Manick. The prisoner, in his defence before me, contents himself with pleading *not guilty*, and citing witnesses to character. These are but two in number; and while the first says prisoner's character is notoriously bad, the other states he lives eight *coss* apart from his (prisoner's) village, and knows nothing about him.

I convict the prisoner of having belonged to a gang of dacoits and beg to recommend that he be sentenced to imprisonment for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to differ from the additional sessions judge in his opinion of the prisoner's guilt. Convicting him of being a professional dacoit, we sentence him to transportation for life.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND GOBIND RAOOTRA
versus
BHEEM SINGH.

Cuttack.

1856.

September 5.

Case of BHEEM SINGH.

Prisoner convicted of murder transported. Conduct of the police noticed.

CRIME CHARGED.—Being an accomplice in the murder of Boistumchurn Sahebra, the uncle of Gobind Raootra, prosecutor; and in the theft of property valued at Rs. 19-1; 2nd count, being an accessary in the said murder and theft, on the 7th April, 1856.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 7th June, 1856.

Remarks by the sessions judge.—The prisoner is charged with being an accomplice in the murder of Boistumchurn Sahebra, uncle of the prosecutor, and in the robbery of 19 Rs. The crime was committed on the 7th April. The body was found on the 8th, defendant was apprehended on the 10th, when he confessed; but it was not written down till the 11th. His confession before the magistrate was taken on the 13th, and on asking a question about some other party, a denial was made on the 30th April, but after talking with other prisoners in jail in the interval, this is not surprising.

By the confession, we learn that twenty-five persons came to the room, where deceased was sleeping, at 9 P. M.; that the light was put out and he was dragged and carried 100 yards from his house; thence was dragged by a cord round the neck, 400 yards further, blows and reproaches having been inflicted all the way, and there they cut off his ears, his nose and his tongue from the root, and murdered him. They carried his body 1100 yards further to a lake at Araikonah, where it was found as proved by the inquest with the body covered with swollen black marks, with the ears clearly cut off, but though the tongue and nose were missing, jackalls had gnawed round those parts, so that marks of being cut off were not seen. There was a mark as from a cord round his neck. The prisoner was taken to the spot where the murder took place, but as it was dark, no investigation could be then made, but the darogah is greatly to blame in having neglected to visit the spot early next morning. He did so in the afternoon and saw the place trampled down and evident marks of blood.

There was an estate sold and the purchaser could not get quiet possession from the refractory ryots, when deceased, a tyrannical person, took it in farm and from his legal and illegal measures

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caused several villagers to conspire against his life. There is a petition from him filed with the case, in which he declares that he fears for his life, and mentions twenty-one names of persons likely to kill him. In searching after one of these, the prisoner, who lives in his house, was seized on suspicion by the police and confessed freely at the thannah and before the magistrate as is proved by evidence. His servant, from the light having been first blown out, recognised no one. There must have been a conspiracy in the village of Muddooparah, for not one witness appears to have recognised any one of the perpetrators of the murder in going to or leaving the house, nor was an outcry raised, and immediate notice given to the police; other defendants were sent in to the magistrate, who acquitted them, as the witnesses said, they had been detained five days at the thannah by the darogah.

The law officer considers the prisoner guilty of the charge of being an accomplice in the murder and robbery of Bustomchurn Sahebra, and I agree in his *futwa*: as the confession before the magistrate was beyond all doubt voluntary, and its truth is borne out by the marks seen at the place where the murder took place and by the marks about the neck and ears of the corpse, I therefore forward the papers to the higher Court, recommending that sentence of transportation for life with labor in irons be passed on the defendant.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The confessions of the prisoner, before the police and magistrate, disclose a most barbarous and cruel murder, fully premeditated on the part of this prisoner and his numerous fellow-conspirators. We entirely agree in the recommendation of the sessions judge, and pass sentence of imprisonment for life in transportation on the prisoner as an accomplice. It is impossible not to be much struck with the great negligence and want of activity of the police, by which, out of twenty-five persons all concerned in an open conspiracy to murder their landlord, and which was effected in the manner described by this prisoner, one only has been brought to punishment. It does not appear that the sessions judge has brought the conduct of the police to the notice of the commissioner of circuit or superintendent of police; and as we think this should have been done we direct that he will transmit to that officer a copy of these remarks.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

HURRISH GHOSE ALIAS GALAKATA HURRISH GHOSE.

Hooghly.

1856.

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Case of HURRISH GHOSE *alias* GALAKATA HURRISH GHOSE.

The prisoner was convicted and transported as having belonged to a gang of dacoits.

CRIME CHARGED.—1st count, dacoity on the night of the 25th November, 1851, in the house of Kishtomohun Bohl of Bargora, thannah Nuddea, zillah Nuddea; 2nd count, dacoity on the night of the 17th February, 1852, in the house of Neelkumul Roy, of Harringdangah, thannah Hutrah, zillah Nuddea; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 2nd July, 1856.

Remarks by the additional sessions judge.—The prisoner was arrested with great difficulty, and with very remarkable adroitness. He has been, it appears, long known as a most formidable leader of a band of *lattials* in the service of a zemindar at Nikassipara recently deceased, and a dacoit also of great notoriety, whom the authorities, from the influential protection afforded him by his master, *could* not apprehend.

Prisoner is charged in this calendar with two specific dacoities, and with having belonged to a gang of dacoits. The first dacoity was at Bargora on the 25th November, 1851. There is only the direct evidence of one approver witness No. 1, Sreemonto Ghose, as to prisoner's participation in this offence, and that witness confessed on 1st June, 1856, only to his share in it, after the prisoner's arrest. On the 1st June he denounced the prisoner and fifteen other accomplices, and has named the same sixteen again to me; and he describes all the incidents of the dacoity now as before. He confessed on his trial *in this court*, having refused to do so in the court below, on 16th May last; being then dangerously ill.

There is the following corroborative evidence to connect the prisoner with this Bargora dacoity. On the 26th November, 1851, the day after the dacoity, a relation of the person whose house was attacked, named Rameshur Bohl, deposed at the thannah that he had wounded several of the dacoits with a sword, and one of them, whose name he was apparently unacquainted with, severely on the head. The prisoner has a cut wound on the head, Rameshur Bohl recognised no less than nine of the gang (eight of whom the approver has implicated)

h so manfully met; but though committed to the sessions, it was considered such evidence alone was insufficient, and they were released. Prisoner's name is not amongst the nine, but it is an extraordinary coincidence that the darogah on the 29th December, 1851, while the commitment above alluded to was still undisposed of, heard the prisoner in this calendar had been wounded, and tried without success to arrest him on that suspicion. Again, Bargora is in the Nuddea thannah, and at least seven or eight miles from the Kotwali thannah, by the darogah of which, one Manick Ghose, was on the 5th January, 1852, arrested on a charge of felony. This Manick Ghose is witness No. 3, in this calendar, and, it appears, was acquainted with the particulars of the dacoity under review, and hinted that one Madhub Ghose had been wounded in the affair; but this information, though at once reported to the magistrate, was not recorded. On that report by an order of the magistrate on 7th January, 1852, this Madhub Ghose (who is named by the approver in this case) was arrested, and in a confession of his, embodied in a proceeding of the Nuddea magistrate of that date, it is found this Madhub, who has since been transported for life for other dacoities, then admitted he had been concerned in the Bargora dacoity *with the prisoner in this calendar*, and five or six others *now denounced by the approver Sreemonto*.

The second dacoity was at Harringdangah, on the 17th February, 1852. There is here too, but one approver witness, No. 2, Bishto Ghose. This man appears to be dying. On the 19th June, 1855, nearly a year before the prisoner was apprehended, he confessed to this dacoity, and denounced the prisoner as engaged in it with him. He also named three others, but he added Hurrish, the prisoner, had collected almost an entirely new set in his gang from his master's place, Nikasiparah, which made him not recognise more. With the prisoner as a dacoit leader, however, he had committed previously no less than fifteen dacoities. Both as to the incidents of the affair, and as to those persons engaged in it whom he was acquainted with, the approver witness's present statement is in complete accordance with his confession. Amongst other things the witness says, the prisoner arranged this expedition through information derived from his uncle Nuffur Ghose, who was, *it is known*, the chowkedar of the place.

In corroboration of the above direct testimony, there is the following overwhelming confirmatory proof. Witnesses Nos. 7 and 8, are servants of Neelcomul, whose house was robbed. They recognized the prisoner whom they knew well from seeing him when on visits to Harringdangah, to his uncle Nuffur, in the act. They deposed to this effect at the thannah, the second day after the dacoity, and have now sworn to the same effect before me. Secondly, one Noyan Sheikh, who confessed to

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Case of HURRISH GHOSE *alias* GALAKATA HURRISH.

having joined in this dacoity, and is now in transportation, denounced the prisoner as an accomplice.

To prove the general charge, we have, besides the above, as follows:

In 1844, on 18th December, prisoner was named by one Bugwan chowkedar, as suspected with his uncle the Harringdangah chowkedar, Nuffur Ghose, of having been in the dacoity at Ruggoonathpore. He was arrested, and tried to shift the suspicion on to witness No. 3, in this calendar, and others. He was committed to the sessions and acquitted. A person who was arrested also on suspicion and confessed to another dacoity in 1846, named the prisoner as an accomplice. This was Kethoo Bagdee, whose confession, dated 25th November, 1846, I have examined, and the dacoity was the Chota Kandooah one. In 1847, the prisoner was taken up as a notorious and dangerous robber, and detained on security, and the Court will see on reference to the committing officer's abstract of the grounds of commitment, how constantly after this, his name was before the authorities.

But we have more *direct* evidence against him on this general charge. Witness No. 3 of this calendar was in several affairs with the prisoner, and in one of them, that at Burshrombra, he, in his original confession, denounced the prisoner as an accomplice. He now confirms his prior statement on oath. The same with respect to witness No. 4, as to the dacoities at Nugodeep, Mydeeah, and Juggurnathpore. (This witness, adds the prisoner, worked sometimes with a gang of his own, and sometimes joined theirs.) The same with respect to witnesses Nos. 5 and 6, as to the Saleegram dacoity. These witnesses all depose to having been associated with the prisoner in a great number of dacoities; but I only name those which were reported and enquired into.

The prisoner, in his defence before me, says, all the witnesses but the first, *whom he does not know*, owe him a spite, and his defence was to the same effect in the court below. He says, he had a dispute with the witness Bishto (No. 2) about the costs in a cattle-trespass case instituted by the indigo-planter, Mr. Savi, and in which they were both fined;—but it is very unlikely there should have been any costs in such a case at all. He debauched, he says, the witness Koobeer's niece. The witness Nobay Ghose (No. 5) he says, lives in the same village with a sister of his, (prisoner's) and he once went there and had a dispute with him about a cow. Witness No. 3 (Manick) is a christian, and he *would not associate with him*. (His father it was I believe who was a "christian.") With witness No. 6 too, he had a quarrel about a cow. I look upon such a defence as almost of itself sufficient to prove habitual association with dacoits. He accounts for the wounds on his head and neck in a most improbable manner, and *calls* no witnesses.

I recommend that the prisoner be sentenced, on all the charges brought against him, to imprisonment with hard labor in transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The additional sessions judge has clearly set forth the proofs of the prisoner's guilt, which we have verified by examination of the records. In concurrence with him we convict and sentence the prisoner to transportation for life.

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Case of HURRISH GHOSE *alias* GALAKATA HURRISH.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

KISTO DOSS.

Midnapore.

1856.

September 5.

Case of KISTO DASS.

Prisoner being a professional dacoit was transported.

CRIME CHARGED.—1st count, having committed a dacoity on 31st March, 1849, in the house of Bissonath Sawunt of thannah Bagnan; 2nd count, having committed a dacoity on 15th May, 1849, in the house of Needheeram Ghurroee, son of Narain Ghurroee, of thannah Purtabpore; 3rd count, having committed a dacoity on 23rd July, 1849, in the house of Bindabun Shee, of thannah Purtabpore; 4th count, being by profession a dacoit and having belonged to gangs of dacoits under Sirdars Moocheeram Khanrah and Soonder Kamar (convicts.)

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate, Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 19th July, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty*" and cites witnesses to prove that he obtains an honest livelihood.

Five approver witnesses swear to the identity of the prisoner and denounce him as having accompanied the gangs which committed the dacoities charged against him; that he acquired the nickname of "Malchora" Kisto Doss is stated by witness No. 4, Koochul Jana, from his propensity to appropriate as much of the plunder as possible instead of fairly distributing it. This witness swears that, the prisoner and his father-in-law, Moh..a Ghora, were very intimate.

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In corroboration of the testimony of these witnesses the records noted in the margin* have been submitted and show—

* *Nuthee* No. 75, dacoity in the house of Bissonath Sawunt.
Nuthee No. 371, dacoity in the house of Narain Ghurroee, plaintiff.
Nuthee No. 372, dacoity in the house of Bissamber Shee.

1stly. The case No. 75, shews a dacoity to have been committed in the house of Bishonath Sawunt in the village of Birampore, the approvers call the village Laokhola; neither the prisoner or any of these approver witnesses were apprehended at that time. Such men as were arrested on the suspicion of the prosecutor do not appear to have belonged to the gangs of which the approvers speak. No similarity in nomenclature appears, unless it be in the name of "Ramkisto Doss" of Amragole or Amrasole (indistinctly written,) but the said "Ramkisto" and the prisoner appear to have been residents of different villages. The only corroboration that the record affords is, as to the matter of two men assuming the garb of burkundazes having first effected an entrance into the house.

Secondly. The case No. 371, a dacoity in the house of Needheeram Ghurroee son of Narain Ghurroee shows that the prosecutor recognized one Moocheeram Khanra witness No. 3, of this trial, and Pershad witness No. 2, and Urjoon Mondul and Mohun Ghora (the father-in-law evidently of witness No. 4, Koochul Jana) and others. All the arrested parties were released. The prisoner's name does not appear either in this case.

Thirdly. The record of a dacoity in the house of Bindabun Shee, No. 372, shows that Bindabun Shee is the nephew of Bissamber, either name seems to be used to designate this dacoity. On the information of Bissamber Shee, Nundo Kamar was apprehended and confessed on the 29th July, 1850, and named amongst others Koochul Jana, witness No. 4, of this trial, and Kisto Doss of Amgechia, the prisoner under trial.

Kisto Doss was arrested and on the 3rd August was examined by the police. He gave his father's name as Bustum Dass, his residence as at Amgechia. The name of the prisoner Kisto Doss is also mentioned by six other persons who were arrested in this dacoity, viz. Nundo Kamar, Cheedam Jana, Soonder Kamar, Shaphul Tera, Modoo Sawunt and Goluck Moitee, who confessed to the crime between the 29th July and 1st August, 1849.

Nothing calculated to exculpate the prisoner, comes out in his defence. He declined to examine the two witnesses to character, because they had denounced him as a bad character before the committing officer. Of the witnesses to the defence, one is the prisoner's father-in-law, another declares him to be a bad character.

The record of the case of dacoity, in Bindabun or Bissamber Shee's house, so strongly corroborates the testimony of the approver witnesses, that there is no room left to doubt their evidence. I therefore convict the prisoner of having belonged to a gang of dacoits, and would recommend that he be transported for life.

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Remarks by the Nizamut Adawlut.—(Present : Messrs. E. A. Samuells and D. J. Money.) The record of the case of dacoity in the house of Bissamber Shee is, as stated by the judge, strongly corroborative of the testimony of the approver witnesses; and although in the other cases the prisoner's name is not mentioned, the fact of the dacoities having been committed, as represented by the witnesses, is established and there are no grounds for doubting their evidence. We therefore concur in convicting the prisoner of having belonged to a gang of dacoits and sentence him to transportation for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND KRISTOLAUL MALL

versus

MUDHOOSOODUN CHOWDHRY.

Beerbhoom. 1856. September 5. Case of MUDHOOSOODUN CHOWDHRY.

Conviction of culpable homicide affirmed, but sentence reduced.

CRIME CHARGED.—Culpable homicide of Jeebun Chowkeedar brother of Kristolaul Mall, plaintiff.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 30th May, 1856.

Remarks by the sessions judge.—On the 2nd Bysack, 1263, 13th April, 1856, Jeebun Chowkeedar, a notorious drunkard, was called to his house by the defendant, who is the brother of the village *gomasta*, when there the door was shut and the unfortunate man was cruelly beaten by the defendant and another man, who has absconded; (the evidence on this point is not very reliable) the person who saw it, says that he called out for assistance, but got none, and was in the act of giving intelligence to the family; when another chowkeedar came and told them that he had found Jeebun in a state of insensibility near the defendant's house, the women and others then went and

Witnesses Nos. 1 and 6.

Witness No. 1.

Witness No. 8.

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found him as above, with several contused wounds especially one on his head, which was afterwards discovered to be a fracture of the skull, and one on the side; they brought him to, by the application of ginger and water; at that time, and to them, he declared that he had been beaten by the defendant; he was taken home and the police informed.

Witnesses Nos. 6, 7, 8, 9 and 10.

A burkundaz came the next day, to whom he said that he had not been beaten, but had injured himself by a fall when drunk; the burkundaz did not think him in any danger, and prescribed a diet of bread and spirits, but the unfortunate man could not recover his appetite, he languished for twelve days and then died.

Witness No. 25.

His body, after the usual inquest, when it was shewn that the wound on the head was three fingers long and half deep, but no brain protruding, was sent in for examination, but decay had commenced and the surgeon was unable to make a proper examination. He states in a letter that the skull was fractured, but that he could not say whether the wound was inflicted before or after death.

Witnesses Nos. 2, 3 and 4.

The only motive the defendant appears to have had for his cruel conduct is, that the deceased, as chowkeedar, had a claim of one rupee against a man by name Ramsoonder Pal, which he enforced against the wishes of the defendant.

Plaintiff and witness No. 6.

The defendant pleaded *not guilty* trying to prove an *alibi;* but with very loose evidence, and also trying to shew that the deceased had come to his death from a fall and drink: but the very witness who states this, allows that the ground, where the man was found, was soft and free from stones, and as well observed by the magistrate in his calendar "it is not likely that the plaintiff (a poor chowkeedar) would have brought a charge against the defendant falsely, when he knew, as he must have done, that he was absent."

Witnesses Nos. 11 to 27.

Witness No. 25.

The jury, with whom I tried this case, considered it not proved, in this I do not concur, the evidence to my apprehension is clear that the man went to the defendant's house; that same evening he was found near it in a state of insensibility from a fracture of the skull and other wounds caused by beating; that there is a motive for enmity shewn; that the deceased at the time stated that defendant was the person who had ill-treated him, it is also clear that from this ill-treatment the man died.

The defence is perfectly inadequate to destroy these facts, and thinking that the fact of a person beating another, then thrusting him out to die like a dog in a ditch, is worthy of much more

punishment than I can give, I beg to refer to the Sudder Court and recommend a punishment of imprisonment for life.

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It would have been better had the magistrate committed for murder; but I could not tell this till I had finished the trial, and did not like to cause delay by having a new trial, especially as I am of opinion that it is not one of those cases in which the extreme penalty of the law would have been awarded.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to doubt the propriety of this conviction. The prisoner has been defended by Meherchunder Chowdree, who has attempted to show that the case has been got up against his client, and has pointed out what he considers discrepancies in the evidence for the prosecution. We find, however, that the case was immediately reported to the thannah as one of violent assault by witness No. 8; the idea of the deceased having hurt himself by falling, while intoxicated, was only originated on the burkundaz going to make the enquiry by orders of the darogah. We disbelieve the evidence in support of this view of the case as also to the *alibi* pleaded by the prisoner; but the sentence proposed by the sessions judge is, in our opinion, far beyond the requirements of the case. The ends of justice will be met by a sentence of seven years' imprisonment with labor in irons, which we hereby pass upon the prisoner.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MODOOSOODUN GHOSE ALIAS KOOKNEE JAMAY MODOO.

Hooghly.

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Case of MODOOSOODUN GHOSE *alias* KOOKNEE JAMAY MODOO.

The prisoner was convicted and sentenced to transportation as having belonged to a gang of dacoits.

CRIME CHARGED.—1st count, dacoity on the night of the 14th June, 1849, in the house of Haradhun Pattuck of Beershromba, thannah Poorbothul, zillah Burdwan; 2nd count, dacoity on the night of the 10th October, 1849, in the house of Ishwur Chunder Chuckerbutty of Guragatcha, thannah Poorbothul, zillah Burdwan and 3rd count, having belonged to a gang of dacoits of which Monohur Ghose was the leader.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 29th May, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with having committed two specific dacoities, and with

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Case of MODOOSOODUN GHOSE *alias* KOOKNEE JAMAY MODOO.

having belonged to a gang; and before the dacoity commissioner he confessed to the above freely and voluntarily, it is proved by witnesses Nos. 3 and 4, on 15th April, 1856. Before me he pleads "*not gailty.*"

The first approver witness, Manick Ghose, confessed to the first or Beershromba dacoity on 6th June, 1854, and denounced the prisoner as associated with him in it; and he has to-day confirmed this statement on oath. He has also on both occasions implicated his fellow-approver witness in the affair; and on cross-examination before me, I have elicited the same particulars of the occurrence as originally detailed by him.

The second approver witness was in both dacoities. He confessed to the first on 21st March, 1856, and to the second on 22nd idem, both before the prisoner was apprehended. He then named amongst his accomplices in both the prisoner, and his fellow-witness in one, that at Beershromba, and this he has to-day repeated before me on oath. The account he gives me of the details of the Beershromba dacoity agree exactly with that given by him to the dacoity commissioner, and by his fellow-witness on both occasions; and he is equally accurate and consistent as to those of the dacoity at Guragatcha.

Both approvers say the prisoner was a regular dacoit in the gang of Monohur Ghose. The defence is a mere unsupported and reasonless denial.

Confirmed as it is by the prisoner's own confession in the lower court and by the fact, that thirteen days after the Beershromba dacoity, he was named as having been engaged in it by an accomplice of the same name, who had been wounded in the affair, absconded, and was eventually convicted; the testimony of these two approver witnesses is, in my opinion, sufficient for the conviction of the prisoner, on all the three counts charged against him; and I recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner confessed before the committing officer, and the evidence of the approvers is corroborated as stated by the additional sessions judge. We have examined the proceedings on this point, and find that the prisoner was named by an accomplice at the time as having been concerned in the Beershromba dacoity. We convict and sentence him as proposed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

TARUN GHOSE (No. 21,) AND DENOO GHOSE (No. 22.)

Hooghly.

1856.

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Case of TARUN GHOSE and another.

The prisoners were convicted and sentenced to transportation as having belonged to a gang of dacoits.

CRIME CHARGED.—1st count, dacoity on the night of the 12th July, 1853, in the house of Gokool Doss Byragee of Mullunchparah, thannah Nuddea, zillah Nuddea, and 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 30th May, 1856.

Remarks by the additional sessions judge.—I convict the prisoner Tarun Ghose, of having belonged to a gang of dacoits on the following evidence:—

1st. The two approver witnesses, Roychurn Joogee and Koobeer Ghose, confessed to having been concerned in the Mullunchparah dacoity on the 12th February, 1853, before the apprehension of the prisoner, and they both then declared the prisoner to have been associated with them in it, *as well as each other*.

2ndly These approvers have now given the same account of the particulars of the affair they gave before, and the only difference between the accounts so given by the two approvers is reconciled by the different posts occupied by them on the occasion.

3rdly. The evidence of Bulloram witness No. 3. This person was in the service of the man whose house was attacked, and on the 13th July, 1853, he deposed at the thannah to having recognised the prisoner, whom he had known all his life. This was on the very day following that on which the dacoity was committed, and the witness has now deposed before me to the same effect on oath.

4thly. Bozohurri Byragee confessed to this dacoity and implicated the prisoner and the approver Roychurn. He is out of the country and cannot be produced as a witness.

5thly. The prisoner is declared to be a Sirdar dacoit by the approvers and his brother to the prisoner Denoo, who has confessed to thirteen dacoities.

The evidence against the prisoner "Denoo" is, first and foremost, his confession in detail to thirteen dacoities before the dacoity commissioner, which the two witnesses Gopal and Joynarain swear, was made deliberately, freely and voluntarily. The dacoity at Mallunchpara is one of the thirteen and so is

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Case of TARUN GHOSE and another.

that at Mashdangah, in which so many professional dacoits are known to have been concerned, and several have been prosecuted to a conviction.

2ndly. The evidence now of the two approvers, who, however, did not implicate the prisoner in their original confessions.

3rdly. Denoo, the prisoner, is Tarun Ghose's brother, and was found in the society of another notorious dacoit, Bonomali Ghose.

4thly. The witness Bulloram, No. 3, has deposed on oath to having recognised the prisoner on the night of the dacoity, and he said the same as far back as July 13th, 1853, the very day after the dacoity was committed.

Tarun Ghose says in his defence, that he did not commit the dacoity charged against him; that he is not a regular dacoit; and that he has witnesses who will speak to his good character. The 1st does so without reservation, the 2nd and 3rd are not so positive.

Denoo Ghose denies both the charges and his previous confessions, but he admits he came to see his brother at Hooghly, the prisoner Tarun Ghose, and he has cited no witnesses.

I consider the proof sufficient against both the prisoners of their having belonged to a gang of dacoits: and I beg to recommend that they be both sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We fully concur with the additional sessions judge, on the grounds set forth by him, in convicting the prisoners of having belonged to a gang of dacoits. We accordingly sentence them as proposed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GUNESH GHOSE (No 1,) BHEEM GHOSE (No. 2,) AND MISSU GHOSE (No. 3.)

Hooghly.

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Case of GUNESH GHOSE and others.

The prisoners were convicted and sentenced to transportation as having belonged to a gang of dacoits.

CRIME CHARGED.—1st count, dacoity on the night of the 11th March, 1853, in the house of Bungshee Dutt of Bodhoy Chunderpoor, thannah Augurdeep, zillah Nuddea; 2nd count, dacoity on the night of the 14th May, 1853, in the house of Ramgottee Seel of Andool, thannah Hatra, zillah Nuddea; 3rd count, dacoity on the night of the 2nd August, 1853, in the house of Ooma Sunkur Sernokar of Kandooal, thannah Augurdeep, zillah Nuddea, and 4th count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 30th May, 1856.

Remarks by the additional sessions judge.—The three prisoners, Gunesh Ghose, Bheem Ghose and Missu Ghose, are charged all and severally with having been engaged in three separate dacoities, and with having belonged to a gang of dacoits.

The 1st dacoity was at Bodhoy Chunderpoor, on the night of the 11th March, 1853, and the 1st approver witness Koobeer Ghose, confessed to having been concerned in it on the 6th June, 1855, and at the time declared all the three prisoners in this calendar (who were not arrested till nearly a year afterwards) and the approver Bishto Ghose witness No. 2, were with him. He repeats this statement before me on oath, and also the circumstances of the case precisely as before. The 2nd approver, Bishto Ghose, confessed to this dacoity on 14th June, 1855, when he also implicated the three prisoners and the 1st witness. He does so again before me, and also on cross-examination gives the same account of the circumstances. To corroborate the above *we have nothing.*

The second count is for the dacoity at Andool, on 14th May, 1853. Witnesses Nos. 2 and 3 were in this dacoity, and confessed to it respectively on the 15th June, 1854, and 18th January, 1855. They then, as now, denounced as associated with them in the offence all the three prisoners and each other. (The 3rd witness in his confession alluded to the prisoner Bheem Ghose as a "Goala.") They have also described the circumstances most consistently throughout. There is no confirma-

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tory evidence in support of the approver testimony on this count; but there are special reasons why the above testimony should, in this case, be particularly relied on. Witness No. 5, Sheikh Fyzoollah jemadar, proves that when Bishto Ghose confessed, it was impossible he could have had any communication with Gopaul Sheikh, the latter having been on that day (15th June, 1855,) and for some time previously locked up in a separate place of confinement on an independent charge. Secondly, the two witnesses cheated one another and quarrelled in the business, as both have admitted; at least the Mussulman witness Gopaul, with an associate of the same creed, got off early in the affair with a large sum of money which they kept to themselves. In the division of their spoil, the honor of the dacoits seems always to be contrary to the proverb.

On the 3rd count, the dacoity at Kandooah, on the night of the 2nd August, 1853, the 2nd approver witness Bishto Ghose alone gives evidence. He confessed to it on the 15th June, 1855; and he then, as now, denounced amongst his accomplices all three prisoners. His evidence to-day before me differs in no way from the account he at first gave of the matter. We have much to confirm the direct evidence of the approver on this count.

Very soon after the dacoity, on 14th August, 1855, the darogah of Augurdeep, who was enquiring about it, received from the darogah of thannah Kotwali, the prisoner Missu Ghose with a hint to examine *him* about the matter. In the same letter, forwarding the prisoner and giving the above hint, the darogah of Kotwali thannah added, he had heard from one Neelmony, a person of respectability, (now dead, I am given to understand) the prisoner Gunesh had been engaged and wounded in the affair. Shortly afterwards, on 9th September, 1853, another wounded dacoit, who had been informed against and seized. confessed, *and implicated all the three prisoners.* It would appear that this Manick, who thus confessed, was traced and arrested on information, altogether different from that against the prisoners Gunesh and Missu. All three prisoners were then arrested, but discharged by the magistrate for want of sufficient proof. *The man Manick was convicted and punished;* thus giving judicial effect to his confession. The character of these three prisoners on their discharge was enquired into; and although they were stated to be much suspected, there was not sufficient evidence forthcoming against them to prove them to be persons of notorious and dangerous bad characters under the statute.

The prisoner Gunesh was recognized by several persons in the dacoity at Putkeabaree, on 28th March, 1848. Their information bears date the 31st of that month, and the following day. Again in a case of "*duggah,*" Gunesh prisoner

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appears in the society of some notorious dacoits, one Jadoo Ghose, who died afterwards in jail, Golakata Hurrish Ghose, and others. The prisoner Missu was once arrested for highway robbery, and on another occasion sentenced by the magistrate to three years' imprisonment for cattle-stealing.

The prisoner Gunesh denies the charges brought against him, but only cites witnesses to character. His defence proves his association with one of the approvers, Bishto Ghose, for he says, they both kept the same woman and quarrelled about her. His witnesses all speak in his favor, but generally only, and without assigning any specific grounds for their knowledge. It is the opinion of Bengal villagers, that a man who cultivates land cannot be a robber. The prisoner Bheem Ghose and the prisoner Missu Ghose also deny the charges, and bring witnesses to speak to character only. They both say, they cultivate conterminous fields, and that the two witnesses Koobeer and Bishto having driven their cattle one day on their (the prisoners') fields, they set to and beat them, which, to look at and compare the physical powers of the four men, was impossible, and if true would prove close neighbourhood and association to a certain extent. Bheem's witnesses speak well of him; but Missu's admit he is a *lattial*, who engages himself out as such to certain zemindars.

It is in my judgment abundantly proved, especially as regards the 3rd dacoity at Kandooa, that the prisoners have belonged to a gang of dacoits; and I beg to suggest that they be all sentenced to imprisonment for life with hard labor and irons in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner Gunesh Ghose is reported by the Hooghly authorities to have died since this case was referred.

The additional sessions judge has fully detailed the evidence against the two other prisoners, and we find by examination of the records, to which allusion is made, that the evidence may safely be depended upon for truthfulness, as it is fully corroborated. We convict the prisoners Nos. 2 and 3, of having belonged to a gang of dacoits and sentence them, as proposed, to transportation for life.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT AND AKALLOO PULLEE

versus

BAREEGHOORAH (No. 10,) GOROOA ALIAS GOOROO-PERSAD (No. 11,) POHAN SINGH (No. 12,) NORO-SINGH (No. 13,) GHEENA PULLEE (No. 14.)

Dinagepore.

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Case of BAREEGHOO-RAH and others.

A prisoner convicted of murder of his wife sentenced capitally; other parties were found guilty as accessaries after the fact.

Judge was directed to take proper notice of perjury committed by certain witnesses.

CRIME CHARGED.—No. 10, wilful murder of his wife Meddun *alias* Meddo Rundee; Nos. 11 to 14, in the 1st count, accessary before and after the fact, and in the 2nd count, privity.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 11th June, 1856.

Remarks by the sessions judge.—The prisoner Bareeghoorah No. 10, is charged with the wilful murder of his wife "Meddun" and the other prisoners are charged as accessaries. The general evidence before me shows that "Bareeghoorah" and "Meddun" retired to rest at night in the south apartment of their residence, and that in the morning the latter was found dead in the said apartment, also that the other prisoners had been there during the night and had performed "Mahatee" a ceremony for the recovery of a sick person. The witness Goluck Pullee No. 5, at first spoke of having heard that "Meddun" died of disease, but on being referred to his foujdary evidence, allowed that it was correct, pleaded a bad memory, and then stated that at midnight he heard the sound of "Mahatee" in "Bareeghoorah's" house, went there and saw him and the other prisoners, also the body of "Meddun" covered with a cloth; that he presumed she was dead as the mouth was open; that next day "Bareeghoorah" came to his house and asked him not to mention what he had seen; that "Meddun" died from violence, and the "Mahatee" ceremony was performed after she was dead; that the day before, Meddun on her return from her aunt's was twice struck by her husband, and that she previously frequently ran away from his house. Witness No. 4, "Bhogul Pullee" brother of the prisoner "Baree ghoorah" gave similar evidence in the foujdary and other witnesses, wives or relations of the other prisoners, also gave evidence to "Meddun's" death having been caused by violence and not by disease. Before me they all spoke to her death having been caused by disease and denied their foujdary evidence or attributed it to their having been tutored and threatened. The darogah, who first investigated the case, was satisfied as to

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its being a case of murder, but could obtain no proof. The darogah, who made the second investigation, very probably induced the witnesses to tell the truth as the brother and wives of prisoners would hardly volunteer to give evidence against them, but I am quite satisfied that they did tell the truth in the foujdary. The defence of the prisoners is, that "Meddun" the wife of the prisoner "Bareeghoorah" was taken ill during the night with pain in the chest, and that at his request the other prisoners came and performed "Mahatee" for her recovery without success. The prisoner "Bareeghoorah" No. 10, when questioned by the magistrate as to the marks of violence on the neck, temple and hand, reported by the civil surgeon, stated that in Assin last his wife "Meddun" ran away to the house of her grandmother, and was beaten by her, not by him. He also allows that he was in the same apartment with "Meddun," from the time they retired to rest until the morning, so that his guilt or innocence rests entirely, in my opinion, upon the point whether "Meddun" was murdered or died from disease. The evidence of the civil assistant surgeon is clear on that point and is as follows: "I observed the following appearances, a severe "bruise over the right temple and a lesser one on the chin, a "contusion extending from the right ear downwards and forwards "across the throat, also from the right to the left shoulder across "the chest. Two contusions on the right arm; one situated just "below the shoulder the other at the bend of the elbow of the left "arm; four others on the same extremity situated posteriorly "between the elbow and the wrist. Blood was found in the trachea. "All the internal organs remarkably healthy. Great violence "must have been employed to cause the injuries above described, "and they are quite sufficient to cause death. These injuries "might have been produced by a person or persons kneeling on the "chest and pressing upon the windpipe, the blood effused on the "lining membrane of the trachea, would be caused by such injury, "and the total absence of any disease leads me to form an opinion "that death was caused in the manner described." The guilt or innocence of the other prisoners depends also as they either performed the ceremony of "Mahatee" after "Meddun's" death, in order to screen her murderer, or did so for her recovery from sickness. The *futwa* of the law officer acquits the prisoners on the grounds that there are no eye-witnesses, and that the evidence of the witnesses for the prosecution in this court is contradictory of the evidence they gave before the magistrate. I cannot concur, as there appears to me no doubt as to the cause of death and the plea of the prisoners that "Meddun" died of disease is clearly false. I would convict the prisoner "Bareeghoorah" No. 10, of wilful murder, and the other prisoners of being accessaries after the fact, and I recommend that the prisoner "Bareeghoorah" No. 10, be sentenced to suffer death, and that the

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other prisoners be sentenced each to seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The witnesses in this case have, with two exceptions, given evidence in the sessions court diametrically opposed to that which they gave before the magistrate. Whereas they previously deposed to various facts, which led to the conclusion that the deceased Meddun Kundee had died from the maltreatment of the prisoner; they now ignore these facts altogether and support the prisoner's statement, that she died of disease. We agree with the judge, however, that sufficient evidence remains to establish the prisoner's guilt. We find that the deceased had been subjected by her husband (the prisoner No. 10,) to a long course of ill-treatment, that she had taken refuge with her relative, in consequence, on previous occasions, that she had recently complained of her husband's conduct to the zemindar, who had reprimanded and fined him; that she returned to her husband's house from her aunt's late in the evening, and was received with blows; and that finally a little after twelve on the same night, the witness Goluck Pallee hearing the noise of the Mahatee, a ceremony performed for the recovery of sick persons, went into the prisoner's house and found that a mock ceremony was being performed over a corpse. The next day the prisoner No. 10, came, it is proved, to Goluck Pallee; and, admitting his wife had died from the effects of a beating he had given her, begged him to say nothing about it. To the police he declared that she had died of a pain in the chest or throat, accompanied with fever. The falsehood of this statement is conclusively proved by the evidence of the civil surgeon, who states, in his deposition, that the deceased presented the appearance of a perfectly healthy woman; that she could not in his opinion have died from the causes stated by the prisoner; and that her body exhibited marks of injuries which were quite sufficient to cause death. Great violence, the civil surgeon says, must have been employed to cause these injuries, and death was in his opinion occasioned by a person or persons kneeling on the chest of the deceased and compressing her windpipe.

We can come to no other conclusion upon these facts than that the prisoner Bareeghoorah No. 10, irritated by his wife's exposure of his conduct towards her, took advantage of their being alone on the night of her return to renew his assaults upon her; and that finally giving way to the dictates of a brutal nature, he consummated his ill-treatment of the unfortunate woman by murdering her in the manner described by the civil surgeon. The case presents no extenuating features, and we concur with the sessions judge in the necessity of passing a capital sentence.

The prisoners Nos. 11, 12 and 14, are relations of the prisoner No. 10; and it is proved by the evidence of Goluck Pallee

that they assisted the murderer in his attempt to evade justice, by assembling in the house and reciting the Mahatee in a loud tone of voice, so as to lead the neighbours to suppose that the deceased was ill, and to give a colour to the defence which the husband intended to set up. We convict these prisoners of being accessaries after the fact and sentence them to five years' imprisonment with labor and irons. The prisoner No. 13, is not mentioned by Goluck Pallee and must consequently be released.

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Case of BAREEGHOOBAH and others.

We cannot gather from the papers before us, whether the witnesses who gave contradictory depositions in the sessions and foujdary courts, and who swore in opposition to the evidence of the civil surgeon that the deceased had died of disease, have been committed to take their trial for perjury or not; it is the imperative duty of the judge on all occasions in which perjury is committed in his presence, to direct the magistrate to bring to trial the persons who appear to have been guilty of it; and if this course has not been pursued in the present instance, we direct that the sessions judge issue the necessary instructions without delay.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,

Officiating Judges.

Cuttack.

1856.

September 6.

Case of BULRAM SINGH.

GOVERNMENT

versus

BULRAM SINGH.

Appeal rejected. The Court agreeing with the sessions judge and jury in thinking that the prisoner was guilty of uttering a forged document, with a view of defrauding another party of the lands for which he was contending.

CRIME CHARGED.—With having for his own benefit, forged or caused to be forged the authenticated copy (signed and sealed by Mr. W. J. Longmore, deputy collector) of *roobukary* or decision A of Roy Rampershad Roy, deputy collector, in a mutation case, bearing date 23rd January, 1845, by having erased the Ooriah letter "N" from the first line of the order and after the eleventh letter of the line; 2nd count, issuing and publishing the said document A, knowing it to be forged, and fraudulently having filed it before the law officer of Cuttack.

CRIME ESTABLISHED.—Issuing and publishing an authenticated copy (signed and sealed by Mr. W. J. Longmore, deputy collector) of *roobukary* or decision A of Roy Rampershad Roy, deputy collector, in a mutation case, knowing it to be forged, and fraudulently filing it before the law officer of Cuttack.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 13th June, 1856.

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Case of BULRAM SINGH.

Remarks by the sessions judge—Document A was filed on the 3rd March, 1856, when the law officer was trying a criminal case against defendant for forcibly cutting a crop. The Ooriah order as written was this, *prathona namonzoor*, that is, the request is refused; but the N is erased, thereby making the order, the request is granted, there is a mark of part of the A, but the N has been evidently scratched out. The forgery must have been attempted for his own benefit. He was tried by a jury as the law officer was interested in the prosecution, and they found him guilty.

Agreeing in this verdict, I sentence him to three years' imprisonment with labor, commutable on payment of 25 Rs. in twenty days.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We agree with the view of the case taken by the sessions judge and the jury who assisted him. It is clear, on the evidence, that the prisoner uttered the forged document referred to, to defraud the other party of the lands for which he was contending. We reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GOBURDHON MOOSULMAN* (No. 8,) BHOLAYSHEIKH (No. 9, APPELLANT,) NEELOO SIRDAR (No. 10, APPELLANT,) CHUNDER GWALA (No. 11, APPELLANT.) BOLLAY MOOSULMAN* (No. 12,) MOOLLOOKCHAND KOLOO (No. 13, APPELLANT,) AND SHEIKH HIMMAYET (No. 14.)

Hooghly.

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September 6.

Case of BHOLAY SHEIKH and others.

The appeal of four prisoners sentenced to imprisonment for dacoity and of another required to give security for good behaviour, dismissed.

CRIME CHARGED.—Having belonged to a gang of dacoits which committed the following dacoities, viz.: On the night of the 24th August, 1848, in the house of Joorun Mussulman of Jaffirpore, thannah Lubsha, zillah Baraset, and on the night of the 25th June, 1851 in the house of Irad Cazee of Sooltanpore, thannah Lubsha, zillah Baraset.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, officiating additional sessions judge of Hooghly, on the 3rd March, 1856.

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* Acquitted by the lower court.

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Case of BHOLAY SHEIKH and others.

Remarks by the officiating additional sessions judge.—The 1st count is not sufficiently proved against any one of the prisoners, as against no one of them have the two approver witnesses consistently testified throughout; viz.: both in their original confessions to the dacoity commissioner and now before me. The account given by the approvers too of the particulars of the dacoity varies considerably as to finding rupees, the lighting of *mussals* before going up to the premises, &c. &c. One Hoolai a runaway approver, denounced, it is true, some of the prisoners (Nos. 8, 9, 12, 13 and 14,) but omitted to name Nos. 10 and 11, and gave a very short and a very vague history of the affair, and his statement is insufficient to make up for what is wanting in those of the two witnesses.

On the 2nd count, No. 8, prisoner has been before tried and acquitted by a competent tribunal, and cannot be tried again. Against No. 12, the 2nd witness did not testify in his original confession, and his doing so now for the first time is suspicious. The same with regard to No 14, whom the 1st witness has named now for the first time. These three are released on this count. But the charge conveyed in the count is sufficiently proved against the remaining prisoners Nos. 9, 10, 11 and 13, both because both the approver witnesses have denounced them consistently from first to last, and because against them each and all, there is the following corroborative evidence. The approver Hoolai (already mentioned) named in his original confession of 19th May, 1855, prisoners Nos. 9, 10, 12 and 14, and witness No. 2. Sona witness No. 1, when taken up for the offence at the time (10th July, 1851,) named Nos. 9, 11 and 13, prisoners; the 2nd witness and Hoolai. Again, one Haneef also arrested at the time, confessed (5th July, 1851,) and named prisoner No. 13, and the 1st witness. (The two witnesses confessed to this dacoity *before the dacoity commissioner* on (date not known) and 20th April, 1855.) Another person Doloo arrested at the time, confessed (on 8th July, 1851,) and named as amongst his associates in the crime, prisoners Nos. 9, 11 and 13. Ameer was seized and named first witness; while of two others, Jetoo and Koney, the last named prisoner No. 13. There is thus corroborative proof against all, even including No. 12, but the one piece of corroborative evidence against him (Hoolai's confession) will not in my mind overweigh the omission of his name by the second witness, Tameezooddeen, in his detailed confession, before the dacoity commissioner; and the same remark applies to prisoner No. 14.

There is no other dacoity brought home to any one of the prisoners Nos. 9, 10, 11 and 13, and they must therefore be acquitted of the general charge of having belonged to a gang of dacoits. There is further evidence against No. 10 prisoner; but it consists only of, 1st, an enquiry into character in 1845, which

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ended in his having to produce security; 2ndly, of an alleged recognition by the gomashta of the house attacked in the Backegram dacoity in 1850, when he was arrested, denied his guilt, and was released; and 3rdly, of a second enquiry into character in the same year, when he was required to furnish security for future good conduct which he did. All this does not, to my mind, sufficiently prove his having belonged regularly to a gang of dacoits, a'though both approvers swear all the prisoners did, and the proof is good as to his general bad character.

Against No. 14, however, whom I have been obliged to acquit on all the three charges for want of legal proof, there is still a charge which, under the evidence advanced, I am myself bound to bring against him; that of being a person of notoriously bad and dangerous character, for he was 1st recognised and arrested in and committed for a dacoity at Peeplee in 1847, though released by the court of circuit. In 1848, he was implicated by Dhonai, an accomplice in the dacoity at Simoolpoor. In the same year in the dacoity at Jaffirpoor. In 1849, again in the dacoity at Bereeramnuggur. In 1851, in the dacoities at Jaykool and Sooltanpoor. In 1852, in the dacoity at Serapole; and lastly in 1852, he was imprisoned as a bad character and only released from jail just before he was brought here.

All the witnesses for the defence, whom the prisoners allowed me to examine, gave them a bad character. I am compelled to release prisoners Nos. 8 and 12, unconditionally. Prisoners Nos. 9, 10, 11 and 13, I convict of the dacoity at Sooltanpoor, and sentence to ten years' imprisonment each with labor and irons in banishment; while No. 14, acquitted of the three counts in the calendar, is ordered to furnish 200 rupees security (in two sureties of 100 rupees each) for future good conduct for the period of three years.

There is great confusion about the name given to the first dacoity charged. The 1st witness says, it is called the "Jaffirpoor" dacoity, there having been another dacoity at "Kaithee Jaffirpoor." The second witness calls the dacoity that at "Shoistanuggur." The approver Hoolai (who has absconded) confessed to it as the "Kaithee Jaffirpoor" dacoity, the Shoistanuggur dacoity being separate; while the darogah at the time named it the "Kaithee Satpie" dacoity. The only clue to this confusion is, that the dacoity spoken to, was committed in the house of a Mussulman; the other one in that of a Hindoo. All the villages named are contiguous and form one cluster.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) Prisoners Nos. 9, 10, 11 and 13, have appealed against the sentence, and prisoner No. 14, against the order of requisition of security for good behaviour. The

evidence of the approvers against Nos. 9 to 13, is amply corroborated, as detailed in the remarks of the additional sessions judge; and the doubtful character of No. 14, is quite established. We see no reason to interfere with the conviction and sentences.

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PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

KALIKOOMAR BANERJEA (No. 12,) AND RADHA MOHUN CHUCKERBUTTY (No. 13).

Hooghly.

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Case of KALIKOOMAR BANERJEE and another.

The appeal of the prisoners sentenced for dacoity, dismissed.

CRIME CHARGED.—1st count, dacoity on the night of the 25th December, 1848, in the house of Raj Mohun Chuckerbutty of Lokefool, thannah Bagdah, zillah Nuddea; 2nd count, being an accomplice in the above crime; 3rd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the dacoity commissioner at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 17th May, 1856.

Remarks by the additional sessions judge.—The two prisoners are charged with the dacoity at Lokefool, on the night of the 25th December, 1848, &c.

The evidence against them consists, in the first place, of the direct testimony of two approver witnesses, Deybee and Nobin Ghose. The first confessed to having committed this dacoity on 10th November, 1854, (sixteen months before the prisoners were apprehended) when he stated with respect to the prisoners that "Kalikoomar the son of the naib of his (approver's) village Beleadanga, and a native of the Lokefool where the dacoity was committed, gave them information which led to the dacoity. Both prisoners (the second is the other's uncle) marched with them, and at midnight brought them to the house to be attacked, remaining themselves outside. The prisoners appropriated to themselves the greater part of the spoil, and accompanied the party a part of the way home again. Kalikoomar's father (the naib) owed money to his master (at Baleadanga) Prannath Chowdry, and told us it was our duty to help him to pay the debt, which we agreed to do in this manner, and he paid our expenses. The dacoity was committed by two gangs, and some of the spoil was secreted from the prisoners. Lokefool is some twenty or twenty-two miles from Baleadanga."

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Before me, this approver witness gives the same account of the transaction. He explains that the prisoners remained outside with him as sentries, and not mere lookers-on. He adds, on cross-examination by the prisoners, that the naib once sued him for a balance of rent after the dacoity, but that he never denounced him or gave him up to the police, though often quarrelling with him either about *black mail* generally, or especially with respect to a part of the spoil, in the Lokefool business, witness had kept back.

The second approver witness Nobin Ghose, confessed this dacoity as far back as 26th April, 1851. He then gave the same history of the affair that Deybee Ghose did subsequently. He stated, however, the prisoner Kalikoomar was the prime mover and principal in it, and that the prisoner Radha Mohun (whom he then called "Radhanath Chuckerbutty, Kalikoomar's uncle") was associated with the professional gangs engaged in the business. Before me he gives his evidence perfectly in accordance with his previous confession, and he says besides, on cross-examination by the prisoners, that the prisoner Kalikoomar, the gomashta of the village, never caused him to be arrested, and that prisoner's father always gave them (the dacoits) his protection as long as he could, and only had them arrested when he could not help himself. He adds, he has never had any dispute about *black mail* with the naib or others, and that the prisoner Kalikoomar and his relatives had a spite against the Lokefool man who was robbed and with whom they (the prisoners and the naib) were connected.

Witness No. 4, was in December, 1848, darogah of thannah at Santipore. He deposes on oath before me to the truth of the circumstances reported by him at the time bearing upon this offence, and the prisoner's connection with it, and they are very peculiar and form an important link in the chain of the evidence. The mohurrir who first reported on the matter is unfortunately dead, and I will here observe that that portion of the commissioner's remarks, to which I have marginally affixed my initials, refers properly to the latter and not the former official.

In consequence of its being reported to the magistrate on 8th January, 1849, (the dacoity had been committed but fourteen days previously) that the two approver witnesses and some others were away from home, probably on some expedition, the magistrate directed the darogah (witness No. 4 of this calendar) to enquire into the matter on 11th idem. He did so and replied on 24th idem that "*the two prisoners* had sallied forth somewhere with Deybee Ghose (1st approver witness) and other notorious bad characters, but that he could not find out whether *that party* had committed the Lokefool dacoity.

Again on the 23rd January, 1849, one Chunder Ghose, whom

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the darogah arrested on suspicion, declared at the thannah the naib (Kalikoomar's father and brother to the prisoner Radha Mohun) had asked him to go to Lokefool as a *lattial*, but that he had declined doing so. He added, *the two prisoners* had gone on an expedition with a number of *budmashes*, some of whom he had seen previously at Bhuggoban's, the naib's house.

There is besides on the record of the Lokefool dacoity an anonymous petition to the authorities, dated 29th January, 1849, barely a month after the dacoity in which the two prisoners are denounced. In it, it is stated, the naib has sent the two prisoners as his agents to commit the dacoity at Lokefool, in the house of a relative.

Lastly, several of the persons named at the time by the police and others, as the *budmashes* who had been engaged with the prisoners in this affair, have been since transported for life for this very dacoity.

The prisoner Kalikoomar pleads *not guilty*. He says the approvers owe him a grudge for having had them occasionally arrested, but he admits he never did this *except under pressure from the police*. He also says the darogah is his enemy and *in league with the approvers (!)* he adds he was ill at the time at Lokefool and in the very house where the dacoity was committed his property too being plundered, but nothing of the kind was stated by him in his original defence, and he owns he never joined the person robbed in reporting the robbery, or ever endeavoured to obtain redress. He cites witnesses to prove the *alibi (!)* and to character.

The prisoner Radhamohun also pleads *not guilty*, and he too says he has assisted in getting the approver witnesses arrested, but only when pressed to do so by the police. He adds he was ill the night of the dacoity at Bulla 25 miles from Lokefool.

Of the four witnesses examined for the prisoner Kalikoomar, Nos. 1, 2, 7 and 8, the two last, called to speak to character only, are his cousins, and say he is an honest man, but the two first declare they don't know where the prisoner was on the night of the occurrence. Of the seven witnesses examined for the prisoner, Radhamohun, the four last, summoned to speak to character, say he bears a good one, while the three first declare themselves unable to say a word in favor of the *alibi*.

I consider the offence laid in the first count of the indictment most fully proved against both prisoners, and I sentence them each to fourteen years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with the conviction and sentence in this case. The evidence of the approvers is strongly corroborated by what became known at the time of the dacoity, as set forth by the additional sessions

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judge. It is apparent that it was a matter of general notoriety then that the prisoners had procured the dacoits; and the approver witness No. 2, who was seized almost immediately on suspicion of having been engaged in it, although denying his participation, which he has now on his oath allowed, admitted the prevalent rumour. We reject the appeal.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,

Officiating Judges.

GOVERNMENT

versus

KHEALLYDOSS PUTWAREE.

Shahabad.

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Case of KHEALLYDOSS PUTWAREE.

Appeal on a conviction of forgery rejected.

CRIME CHARGED.—Forgery in that the *jummabundee* papers of mouza Behriah, pergunnah Deenarah, for 1261, F. S. filed before the ameen by him, were false and fabricated with intent to defraud the Government.

CRIME ESTABLISHED.— As crime charged.

Committing Officer.—Mr. H. Wake, officiating magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 26th March, 1856.

Remarks by the officiating sessions judge.—The prisoner is charged with forgery in having, as a putwaree, given in a false *jummabudee* paper for mouza Behriah, which was in course of settlement by the revenue authorities. The collector of this district went to settle this estate and, on examining the above mentioned account, found that it did not agree with the ameen's measurement paper or with the putwaree's statement given on oath. This *jummabundee* paper, to the correctness of which the putwaree first swore before the collector, was furnished by him in the month of November, 1854, to the measuring ameen; it bears the initials of the former officiating collector, showing that it had been filed in the proceedings connected with the settlements of this mouza.

On the same day, viz. the 10th December, 1855, on which the putwaree swore to the correctness of this account, he subsequently swore that it was incorrect, and that having been told by Sheikh Yad Ally, Sheikh Toofail Hossein and Deonath Singh to give in a reduced *jummabundee* as the estate was about to be settled, he had put down the *jummabundee* for 1261, F. the year in question, at a small amount according to this paper the extent of cultivated lands was 397 B, 17 C, the *jummubundee*

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of which, as shown in the same document, amounted to Rs. 449, 12 annas, 6 pie, whereas by the ameen's measurement the cultivated lands were found to be 488 B, 18 C, 2¾ D, of which the *jummabundee* according to the "*tukseemgula*" papers filed by the same putwaree on the 8th December, 1855, and signed by him, his verbal statement and the result of the collector's investigation was 610 Rs. 13 annas 2 pie, thus showing the putwaree's account to be incorrect to the extent of 91 B, 1 C, 2¾ D, of cultivated land, which had been altogether left out by him in this paper and to the amount of 161 Rs. 0 annas 8 pie *jummabundee*.

The deposition of the putwaree before the collector on the 10th December, 1855, in which he swore to the incorrectness of the account, which he had filed, and to the correctness of that which was prepared by the collector's peshkar, is sworn to by witnesses Nos. 1 and 3; though the latter states that the putwaree made some objection to the *jummabundee* account in the latter.

Rughooburdeal, the collector's peshkar, whom I subsequently summoned as a witness (his evidence not having been taken in the magistrate's court) swore to the fact of the "*jummabundee* and *tukseemgula* papers" having been filed by the putwaree; and to his having read the account prepared by this witness, his stating it to be correct and that the one which he had furnished to the ameen was incorrect.

The substance of the defence is that he was threatened by the collector, who kept him without food and that consequently he was not in a right state of mind and knew not what he said.

The witnesses for the defence depose to the collector having told the prisoner to give in papers showing a higher *jummabundee* than that recorded in the papers filed by him, and his being fined by the collector, which latter circumstance is also mentioned by a third witness.

The law officer convicts the prisoner of the crime with which he is charged, and, concurring with him in this finding, I sentence the prisoner to imprisonment for three years without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs E. A. Samuells and D. J. Money.) The prisoner urges the same pleas in appeal that he did in the lower courts; but they do not appear on the evidence, afforded by the record, to be entitled to the smallest credit. The fabrication of the papers which the prisoner filed with the ameen is proved by the admission of the prisoner himself,—the evidence adduced of the false measurements which they exhibit, and the incorrectness of the accounts, by which they are accompanied. The appeal is rejected, and the sentence of the lower court is confirmed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT

versus

TARACHAND ALIAS TARUN CHUNG (No. 6,) GOVIND CHUNG (No. 7,) HURRISH CHUNG (No. 8,) HURRISH SATGOPE (No. 9,) URJOON ALIAS RAJOO DOSS (No. 10.)

Hooghly.

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Case of TARACHAND *alias* TARUN CHUNG and others.

The prisoners were convicted and sentenced as dacoits by profession.

CRIME CHARGED.—1st count, Nos. 6 to 10, dacoity on the night of the 6th September, 1844, in the house of Oomachurn Ghose of Khamargatchee, thannah Beneepore, zillah Hooghly; 2nd count, dacoity on the night of the 26th March, 1847, in the house of Kali Surnokar of Rughoonathpore, thannah Bansberriah, zillah Hooghly; 3rd count, Nos. 6 and 7, dacoity on the night of the 1st March, 1848, in the house of Gopaulchunder Dutt, of Mussooriah, thannah Beneepore, zillah Hooghly; 4th count, Nos. 8 and 10, dacoity on the night of the 8th May, 1848, in the house of Prosonochunder Bhuttachargee of Dhobapara, thannah Beneepore, zillah Hooghly; 5th count, Nos. 6 to 10, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate under the dacoity commissioner, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 4th June, 1856.

Remarks by the additional sessions judge.—All the five prisoners are charged with the dacoity in the first count at Khamargatchee on the night of the 6th September, 1844, nearly twelve years ago. The two approver witnesses, Cheeroo Koigeria and Cheeroo Chung, who denounce the prisoners in this case, confessed to the dacoity on the 13th December, 1855, and 1st February, 1856, respectively. It will be observed that before this confession, one of the prisoners, Hurrish Chung, had been arrested on the charge. The first approver witness has named all the five prisoners as engaged with him in this dacoity on both occasions, as also witness No. 2. He has also named throughout in it, witness No. 3, who has denied he was there, though his gang was. The witness implicates before me in this affair twenty-seven persons, all of whom he named before, but forgets three formerly mentioned. The details or incidents of the affair, he describes again now as at first.

The 2nd approver does not differ before me from his previous statements. He again declares all five prisoners were out in this dacoity, and amongst the names he gives are a great proportion of those given by his fellow-witness. Still something

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further is essentially necessary to prove the prisoners' participation in this crime, and that these approvers should have denounced now three other men who were punished for the crime at the time, is manifestly insufficient without further corroboration.

The second dacoity is also charged against all the prisoners. It occurred at Rughoonathpore, *on the 26th March*, 1847. Three approvers confessed to this, the two already named and Roopchand Doss. The last confessed to it on the 21st March, 1856, after three of the prisoners in this calendar had been arrested for it. The first witness denounced originally all the prisoners and his three fellow-witnesses, but the witness Juggoo Chung, was again not present in it, it appears, though the gang was, of which he was a ringleader; Cheeroo Koigeria gives the details of the affair before me precisely as he did before, but he seems to have named the witness Juggoo, as an associate in the crime *at a guess*. The 2nd approver has not made the same mistake, and he too has denounced throughout all the five prisoners as well as his two fellow-witnesses. His confession is dated 4th February, 1856. The approver, Roopchand, implicated last February, witnesses Nos. 1 and 2, but only prisoners Nos. 6, 8 and 10. Now he says all five prisoners went with him, and it is clear his evidence is not to be trusted.

In confirmation of the above as to this Rughoonathpore dacoity, we have positively nothing, but on the contrary, the person whose property was attacked, declared at the time he recognised two of the dacoits, who were arrested, and released, and who we now know were not of the party.

On the 3rd count, the dacoity at Mussooria on the night of the 1st March, 1848, there is stronger evidence, but it is only against the prisoners Nos. 6 and 7, Tarachand and Govind Chung although but one approver, Juggoo Chung, No. 3, has confessed to it and denounced the prisoners named. He confessed on the 23rd January, 1856. He now says, which he did not before, the witness Cheeroo Chaklai was in the affair, which the latter has never committed; but he names before me twelve associates of whom he at the first named eleven. The incidents of the dacoity he has described consistently with his former statements.

The indirect or confirmatory evidence against the two prisoners charged in this count is, in my judgment, sufficient for their conviction. Three days after the dacoity, the approver, Juggoo Chung, was arrested for this offence on suspicion, when he confessed and denounced (amongst others) the two prisoners and one Mudhoo Chung. That he then confessed to the truth is proved by Mudhoo Chung on being next arrested also confessing and naming the two prisoners and Juggoo. This was on the 5th March, 1848, or four days only after the dacoity.

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This Mudhoo subsequently repudiated his confession, and is now before the sudder Court for transportation as a professional dacoit.

On the 4th count, the dacoity at Dhobaparah, on the 8th May, 1848, there is also but the testimony of one approver witness Roopchand, and his testimony is altogether valueless. He confessed to the dacoity on the 20th March, 1856, after one of the two prisoners charged with the offence (Nos. 8 and 10,) had been apprehended for it, and his statement, though consistent as to the particulars of the occurrence, is contradictory as to the persons concerned in it. He named, in the first instance, only prisoners Nos. 8 and 10. He now names No. 6, and perhaps, he adds, No. 9 was there too. He adds too the approver, Juggoo (witness No. 3,) was one of the party, which Juggoo has all along denied.

Circumstantial or confirmatory evidence on this count, there is but little; prisoner No. 10 was arrested at the time, (on 13th May, 1848,) two neighbours, it is said, having recognised him, and that is all.

On the general count, the direct evidence amounts to this. The witness Cheeroo Koigeria, states that all the prisoners were regular members of Nobin's, Shewuk's, and Juggoo Chung's (witness No. 3's) gangs, Cheeroo Chukloi and Juggoo Chung, the same. The approver witness, Roopchand, declares he has been twice concerned in dacoities with prisoners Nos. 8 and 10, and once with both Nos. 6 and 7, but never with No. 9.

The indirect evidence on the general count is as follows: prisoner No. 6, was arrested with others as far back as 1833, on suspicion of having been concerned in the dacoity at Beldangah. Four of his accomplices denounced him in their confessions, and he himself admitted his crime. But on being tried by the sessions judge he was discharged,—having probably repudiated his mofussil admissions. The same accomplices declared the prisoner had been concerned with them in three other dacoities which they particularized. In 1845, the prisoner was again taken up as was prisoner No. 10, when both were placed in confinement from inability to give security for future good conduct. This has been ascertained from the jail warrant which bears date the 30th October, 1845. In 1849, prisoner No. 10, was again (as was at the same time the approver witness, Roopchand) apprehended by the police. The darogah on 20th January, 1849, declared him to be a notorious dacoit, but he got off that time by the assistance of his zemindar's gomashta, who, there is now good cause to think, was a receiver of stolen property in league with them. Thus much of prisoners, Nos. 6 and 7, on the 3rd count, and of prisoners, Nos. 6 and 10, on the general count.

Prisoner No. 9, was taken up in 1853, for the Satbangal

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dacoity, but discharged for want of evidence. He had been recognised by a neighbour of the man whose house was robbed, and denounced the very next day, or 6th June. This prisoner in his defence, in the *lower* court, admits he was then imprisoned in default of security for good conduct.

There only remains prisoner, No. 8, Hurrish Chung. No specific dacoity has been sufficiently proved against him any more than against Nos. 9 and 10, but his association with dacoits is clear enough. His brother Modoo was denounced and arrested for dacoity in 1348. In the same year his brother-in-law, Jadoo Chung, was arrested on suspicion of being a professional robber, on which occasion, the approver witness, Roopchand, was also apprehended. Prisoner's uncle, Bissoo, died in jail under a charge of dacoity; and a first cousin the same; while another first cousin, Nobin, is at the present moment in custody on a charge of dacoity.

For the defence, the prisoner, Tarachand, says he has had a quarrel with the approver, Juggoo, *who is his cousin*, about the latter's treatment to his wife, and that he is not acquainted with the other approvers who have testified against him. Before the deputy magistrate he did not give this reason. He cites witnesses to character only, who have been examined and declare the prisoner to be a person of notorious bad character. Prisoner, No. 7, says, he was the village chowkeedar and reported the witness, Juggoo, at the thannah to be a thief, when the darogah maltreated him (Juggoo). With regard to the witness, Cheeroo Chuckloi, he says, he assisted a burkundaz in watching and seizing him. Before the deputy magistrate he said he was not acquainted with the last named approver, while the story he now tells against *him*, he then told against *Juggoo*. He has tendered the evidence of two witnesses to character who speak favorably of him.

Prisoner, No. 8, pleads that the approver, Cheeroo Chung, was a rascal and forbidden by witness to come to his (witness's) village. Witness, No. 1, he is not acquainted with; but the witness Roopchand and he had had a quarrel about some rent. He has offered no evidence on these points, and the two witnesses he has summoned to speak to his good character *give him a bad one.*

Prisoner No. 9 says, he had a quarrel with the 1st approver's father-in-law about a tamarind tree, when he (prisoner) gave him a beating. This he said before. He adds that the approver, Juggoo, carried off a woman from his village whom he rescued from him; *but this approver has given no evidence against him. He too cites witnesses to character only, who give him a bad one.*

Prisoner No. 10 says before me the approver witness, Roopchand's sister, was a woman of bad character, and that Roopchand has denounced *him* for refusing to eat with *her;* but he

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said nothing of this in the court below. On the contrary, he admitted before the deputy magistrate, he was driven out of his village for being a "*budmash.*" He cites two witnesses to prove his defence, and four to prove him to be an honest man. One of the first has not appeared, but the other declares he knows nothing of the circumstance. Of the last four witnesses, two say prisoner is a well known bad character, and two speak doubtfully in his favor.

I convict the prisoners, Tarachand Chung and Govind Chung, Nos. 6 and 7, on the 3rd and fifth counts, and recommend that they be transported for life. The evidence, as to the charges, contained in the calendar is, I think, insufficient to convict the other three prisoners on those charges, or any one of them, but is more than sufficient to shew they are all three notorious and dangerous robbers by profession, whom it would be unsafe to set at liberty without substantial security for their future good behaviour; and I propose, on the Court's deciding as to Nos. 6 and 7 to order 100 rupees security to be taken from them under the provisions of Regulations VIII. of 1818, Section 10, and III. of 1819. Intermediately they will remain in custody as heretofore.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton). For the reasons recorded by the additional sessions judge in his letter of reference, we convict prisoners Nos. 6 and 7 of the 3rd and 5th counts in the calendar; and sentence them, as proposed, to imprisonment for life with labor in irons in transportation beyond sea.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

Hooghly.

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Case of MOHESH JAIRY GWALLA.

The prisoner was sentenced to transportation on conviction of dacoity.

GOVERNMENT

versus

MOHESH JAIRY GWALLA.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. H. V. Bayley, sessions judge of Hooghly, on the 20th of June, 1856.

Remarks by the sessions judge.—The prisoner was apprehended on the 24th May, 1856. On the 31st he *confessed* before the *deputy magistrate;* his confession there, has been duly attested here, by the witnesses Nos. 3 and 4, here he pleads *not guilty*

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and avers that witness No. 3, (Gopaul Misser) just before the trial threatened to beat him with a shoe. On my immediately asking him whether he had witnesses, he said two persons were, but that he did not know their names, and on my further asking him how it could benefit the said Mookhtear whether prisoner confessed or not, he gave no answer. In his defence too he asserts, that Nobin Ghose witness No. 1, drugged him with *ganja*, and that in that state he was made to confess, and to cause to be written whatever was wished. I need not repeat, that the confession was duly attested before the deputy magistrate, and here; but I have also carefully considered that confession, and it will be observed how peculiarly minute the prisoner is as to matters not likely to be otherwise than within his own knowledge, such as, his own circumstances in early life, his first initiation into crime, the *alias* names of various dacoits and the present residences of some of them; as also the fact of witnesses Nos. 1 and 2, and Radhanath (mentioned by prisoner as a dacoit) being his neighbours, connections and leaders in dacoity.

The prisoner confessed before the deputy magistrate to 10 (ten) dacoities. The witnesses Nos. 1 and 2, depose also to prisoner's participation in *three* of these, with them both. The witness No. 1, to prisoner's participation in three dacoities *without No. 2*. And prisoner's and No. 1's original confession in the dacoity commissioner's office, and the questions put by me here to No. 1, and to No. 2, both corroborate the statement, that No. 2, did not participate in those three dacoities, a point which may fairly give weight to their testimony, as to who did really participate in the specific dacoities they each depose to. That evidence too, is in conformity with their original confessions (No. 1, April 1854, No. 2, November 1854,) before the commissioner, not only as respects the particulars of their own participations in those dacoities, but also as respects particulars of the prisoner's participations, as given by himself. For instance there are the strongest *coincidences* in the prisoner's confession of the *Badagatchee* dacoity (vide No. 4, of his confessions) and No 2's evidence here, and confession before the dacoity commissioner, as to the *bricks* thrown on the dacoits, and the wounding of the *Hindoostanee durwan*. Again there is the same coincidence between prisoner's confession (vide No. 3), before the deputy magistrate under the dacoity commissioner, and the evidence here of witness No. 1, as to the *four wounded men* in the Chandpore dacoity. Again as to the bamboo scaffold by which the dacoits entered in the *Choornee Rughoonathpore* dacoity.

But taking the case in the same light as if the prisoner had denied his guilt (Section 6, Regulation XIX. 1793,) I have to observe, that the concurrent evidence given here by witness No.

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1, Nobin Ghose approver, and by witness No. 2, Devi Ghose approver, shows clearly that prisoner was engaged in the *Kishto Debpore* and *Luckpore* dacoity.

I was most careful to keep both witnesses in my sight, while I cross-examined them, and the one at such a distance outside the court, that no one could communicate with him. I then cross-examined them.

Kishtodebpore dacoity.

It will be seen as to this dacoity that the confession of the two witnesses before the deputy magistrate, and their evidence here, and the prisoner's confession before the deputy magistrate (No. 8,) most clearly agree as to the peculiar fact that *Settoo procured weapons* for the dacoits, who joined from prisoner's side of the water, as well for those who joined from Settoo's own side: also as to the manner of entering into the house, as to Radhanath being struck, and as to the disposal of the property by witness No. 1, and prisoner.

Luckpore dacoity.

In respect to the Luckpore dacoity, prisoner's confession before the deputy magistrate (No. 5,) stated that he joined them, but went back sick. Witness No. 1, says, he did not know who went on after leaving Ranaghat; witness No. 2 says, prisoner was at the dacoity. But I have still no doubt from the coincidences in the evidence of witnesses Nos. 1 and 2, that prisoner belonged to the gang.

I put no stress on page 210 of record No. 392, showing that prisoner and witnesses were both named in an *anonymous* petition as engaged in the Luckpore dacoity; but it may be *remarked* that the witnesses Nos. 1 and 2, and prisoner, are three of the sixteen named, and that of the others, No. 1, Nund Ghose, No. 2, Baraneese, No. 3, Radhanath, No. 4, Nobin Bagdee and No. 5, Odoito were transported by the Nizamut Adawlut, and No. 6, Ishwar Ghose was sentenced to fourteen years' imprisonment in banishment.

No. 1, 11th March, 1856.
,, 2, 26th May ditto.
,, 3, 11th March ditto.
,, 4. ditto.
,, 5, ditto.
,, 6, ditto.

I consider that under the above circumstances,* the prisoner is *guilty* of the charge of *having belonged to a gang of dacoits;* and *I recommend* that he be *imprisoned for life in transportation.*

* Vide Nizamut Report, 1853, page 87, Jadoo Manjee.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The evidence against the prisoner is corroborated by his free and voluntary confession before the deputy commissioner, and his excuse that he made that confession under the influence of *ganja* administered by Nobin Ghose is not trustworthy. The sessions judge has moreover taken

proof of his guilt, irrespectively of his admissions, as set forth in his report. In concurrence with that officer, we convict the prisoner of having belonged to a gang of dacoits, and sentence him to transportation for life.

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PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

PITAMBER SOOREE.

Hooghly. 1856. September 6. Case of PITAMBER SOOREE.

Appeal of prisoner convicted of guilty receipt of property acquired by dacoity rejected.

CRIME CHARGED.—Unlawfully and knowingly receiving in payment for liquor supplied, property stolen or plundered by dacoity in the house of Kartick Churn Dutt at Atkoorah, thannah Pandooah, zillah Hooghly, on 16th January, 1855, and in the house of Ishur Chunder Pall at Boinchee, thannah Pundooah, zillah Hooghly, on 17th January, 1855.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the dacoity commissioner at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 4th April, 1856.

Remarks by the additional sessions judge.—The deputy magistrate, while in an official tour through his district with certain dacoit approvers, was informed by one of them, Shona Faqueer (who has since escaped from custody) that certain property acquired by him at the dacoities at Boinchee and Atkoorah would be found, if searched for on the prisoner's premises, the prisoner having taken it in lieu of money for grog supplied by him to the gang. Shona Faqueer's supplemental deposition to the above effect was taken down at once on the 6th February, and on the following day prisoner's house at Birshimool was searched, the prisoner not being present, and in a stack of straw within the enclosure were found certain pieces of muslin cloth and a large brass *gurrah*. That other property of the kind was found *in* the house, which has been found to belong honestly to the prisoner, has not been proved, but the cloth, &c. found in the stack is undoubtedly part of the spoil of the Boinchee and Atkoorah dacoities from the evidence for the prosecution, the defence, and the circumstances of the case.

Witness No. 2 saw the house searched, and the cloth, &c. found in the stack. Witnesses Nos. 3 and 7, prove this was the kind of cloth lost in the Boinchee dacoity, the brass *gurrah* being distinctly identified by witnesses Nos. 4, 5 and 6, as the

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property of the proprietor of the house robbed at Atkoorah. At the time, probably through the evil influence of the police, this dacoity was said not to have been consummated, but the one at Boinchee was duly reported and enquired into. The prisoner says, he bought the cloth, and the *gurrah* was his father's, but his own witnesses do not, in any way, support his statement. There is moreover circumstantial evidence against him of the strongest kind with respect to the cloth. When Shona Faqueer was apprehended and confessed to the Boinchee dacoity on 8th February, 1855, he alluded to some Santipore *chuddars* he had got in the Boinchee affair, and which were found in his house.* These have been produced, they have very peculiar borders, and they are exactly similar to those found with the prisoner. The prisoner has been proved to keep an illicit distillery and to have been intimate with witness No. 8, Shona Faqueer, and other dacoits.

* Witnesses Nos. 9 and 10.

I convict the prisoner of the crime charged and sentence him to five years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner does not deny that the property was found on his premises in the manner stated. The fact of its concealment affords the strongest presumption that he had knowledge of its guilty acquisition. His witnesses do not prove that the property is his. We see no reason to disturb the order of the sessions judge, and reject the prisoner's appeal.

Arracan.

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Case of
GNAWOOWA.

Prisoner convicted upon the dying declaration of the wounded man, supported by other evidence, of the wilful murder of Moongbai, and sentenced, under all the circumstances of the case, to imprisonment for life in transportation.

Irregularity on the part of the magistrate, in allowing the declaration of the deceased to be taken by the sheristadar of his court and in not taking it himself, though he however lived sixteen days after he arrived in the station of Akyab and the importance of making in all practicable cases "dying declarations" become "dying depositions" by being clothed with the sanction of an oath, noticed by the Court.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
GNAWOOWA.

CRIME CHARGED.—Wilful murder of Mongbai.

Committing Officer.—Mr. T. Shepherd, officiating 2nd principal assistant commissioner of Akyab.

Tried before Captain H. Hopkinson, commissioner of Arracan, on the 16th May, 1856.

Remarks by the commissioner.—The case was committed by Mr. T. Shepherd, officiating principal assistant to the commissioner at Akyab, on the 29th April, 1856.

On the 1st April last, a wounded Mugh,* named Mongbai, was brought to the civil hospital at Akyab, and on the 2nd of the same month, being at the time, and thinking himself to be, in danger of approaching† death, he made a statement to the following effect, that on the evening or about 8 o'clock P. M. of 31st March he went to see his lately divorced wife, Meetsankyne (who immediately after the divorce had married the prisoner) to try and induce her to return and live with him, she would not, however, agree, and he had just left her house and might have been no more than eight yards from it, when the prisoner came up behind him and stabbed him in the back, whereupon snatching a stick from a fence hard by, he in turn faced round upon the prisoner, and struck at him and put him to flight; at the same time he called out that he had been stabbed by the prisoner, and some neighbours hearing his cries came to his assistance.‡ Search was then made for the prisoner, he could not be found any where that night, but the following morning he was discovered and apprehended at his aunt's§ house. The instrument with which the wound was inflicted, a Burmese knife about nine inches long in the blade with a short handle, was found by the witness Pongka (No. 2) on the 2nd April, in a garden near where the crime was committed, and stained with blood. Mongbai died on the 18th April, 1856 of the wound he had received. It was a very severe one, it had

* Mongbai deceased.

† Mongnoon No. 9.

‡ Natho-kay, No. 5.
Nara-pon, " 11.

§ Cheong, No. 1.
Pongka, " 2.

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I convict the prisoner of the crime charged and sentence him to five years' impris nment with labor and irons.

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Arracan.

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Irregularity on the part of the magistrate, in allowing the declaration of the deceased to be taken by the sheristadar of his court and in not taking it himself, though he however lived sixteen days after he arrived in the station of Akyab and the importance of making in all practicable cases "dying declarations" become "dying depositions" by being clothed with the sanction of an oath, noticed by the Court.

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* Mongbai deceased.

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Pongka, ,, 2.

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been dealt under the fifth rib near the spine, and had penetrated into the cavity of the chest wounding the right lung.* Mongbai in his dying declaration had declared that he could identify the prisoner's knife, having seen him sharpen it on the day of the evening he was stabbed, in one Brama's house.

* J. W. Mountjoy, Esq.

The prisoner's defence is, that on the evening of the 31st March last, just as he was leaving his wife (deceased's former wife) Meetsankyne's house, on a journey to buy rice, he saw a man crouching underneath it, he called out, when the man rushed up and attacked him with a stick, the prisoner flourished the knife at him, it came in contact with his person, and inflicted a wound: he did not know at the time whom he had wounded (before magistrate prisoner says he recognized Mongbai by his voice). Mongbai, he says, had no doubt come to his house to beat him because he had married Mongbai's wife. The prisoner's wife denies that her former husband visited her or entered her house the night he was wounded.

I do not think the prisoner's defence at all worthy of acceptation. The Arakanese do not usually set forth on their travels at night, and though they constantly go armed on a journey, it is with the long-handled Burmese sword slung over the shoulder, or the common country Dha: such a weapon as that with which the prisoner stabbed Mongbai is oftenest found with the thief or assassin. It is not only beyond the limits of belief that the wound which proved mortal to Mongbai, could have been inflicted by the accidental flourishing of a knife, but its nature and position are opposed to the possibility of its having been even given in a renconter like that described by the prisoner. If Mongbai had first set upon the prisoner with a stick, and the latter had thereupon rushed in upon him with his knife, and stabbed him, we should have found the blow in front, perhaps in the chest or abdomen, or it might have taken him in the side, but Mongbai could not have been at the time in a position, attacking the prisoner, to have received a stab close alongside the spine and going direct through the body into the lungs, but must have been presenting a fair back for the blow, his face must have been turned directly from the prisoner and he must have been wholly off his guard, while on the other hand the prisoner would hardly have been able to deliver such a home-thrust had he been engaged at the same time in defending himself from Mongbai's assault. The presumptions of the case are thus, I think, entirely in favor of the reception of Mongbai's dying declaration, it is otherwise clear and consistent, and I can come to no other conclusion than that Mongbai received his death-wound precisely in the manner stated in it. Mongbai divorcing his wife, and immediately after wanting her back, is a proceeding of which there are every-day examples in Arakan, and if

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herein the prisoner found occasion for jealousy, we have a motive for the assassination of the deceased.

Upon the foregoing grounds, I convict the prisoner Gna-woo-wa, son of Poo-oong, deceased, of the wilful murder of Mongbai by stabbing him with a knife, and thereby giving him a mortal wound of which he (Mongbai) died, and I recommend that a capital sentence be passed upon the said prisoner Gna-woo-wa.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The chief evidence in this case is the dying declaration of the deceased Mongbai; according to that statement, which is, as remarked by the commissioner, clear and consistent, it would seem, that on the deceased leaving the house of the prisoner's wife, whither he had gone for the purpose of inducing Meetsankyne, who had been his wife but who after being divorced by the deceased had married the prisoner, to return to him, the prisoner came up behind him and stabbed him in the back with a knife. This declaration was subscribed by the *serishtadar* of the magistrate's court, who wrote it, and also by the jailor. They both have, on oath, deposed that the statement was made before them by the deceased under the apprehension of impending dissolution.

The witnesses Nos. 1, 2, 3, 4, 5 and 6, depose to hearing the deceased cry out, that he had been stabbed by the prisoner; to going to the spot and to seeing the deceased in a wounded state; witnesses Nos. 10 and 11, also depose to their having seen the deceased after he was wounded, and to having heard from him that he had been stabbed by the prisoner.

The civil assistant surgeon deposes that on examination of the corpse of the deceased, he found that the knife had entered between the ribs into the cavity of the chest, wounding the right lung; that the lung was utterly destroyed by the suppuration caused by the wound; that the left lung was healthy and that the stab was the cause of the deceased's death.

The prisoner, in his defence, acknowledges to having stabbed deceased, but adds that as he was leaving his wife's house he saw a man crouching underneath it; he called out, when a man rushed upon and attacked him, prisoner, with a stick; that he flourished a knife at his assailant which came in contact with his person; hence the wound.

The mother-in-law and wife of the prisoner are his only witnesses; they both deposed that they heard the noise of the stroke of a stick before the deceased called out that he had been stabbed, and the latter denies that the deceased entered her house on the night in question. We entirely agree with the opinion expressed by the commissioner as to the degree of credit to be placed upon the prisoner's defence; and we place entire reliance upon the dying declaration of the deceased, supported as that is by other evidence, regarding the mode in which

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the wound was inflicted; that declaration does not, however, so furnish us with sufficient information regarding what occurred previously to the infliction of the wound upon the deceased.

We convict the prisoner of the wilful murder of Mongbai and, under all the circumstances of the case, sentence him to imprisonment for life in transportation.

We observe that the commissioner has noticed the irregularity in the proceeding of the magistrate, in allowing the statement of the deceased to be taken by the *serishtadar* of his court, and in not taking it himself, though the prisoner lived until the 18th April, sixteen days, that is, after he arrived in the station of Akyab; .t is consequently unnecessary for us to do more than remark that it is of the first importance that in all practicable cases "dying declarations" should be made "dying depositions!" by being clothed with the solemn sanction required by law.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND PEAREE DOMNI

versus

NUFFER DOME.

Chota Nagpore. 1856. September 6. Case of NUFFER DOME.

Prisoner convicted of the wilful murder of his wife by splitting her skull with an axe, and, as no extenuating circumstance appeared, sentenced capitally.

CRIME CHARGED.—Wilful murder of Musst. Puddee Domni, daughter of the prosecutrix.

Committing Officer.—Captain G. N. Oakes, officiating principal assistant commissioner of Manbhoom.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 7th August, 1856.

Remarks by the deputy commissioner.—The prosecutrix who is the mother of the deceased has no knowledge of the facts.

The prisoner pleads *not guilty*.

No. 1, Adit Dome, states that one morning about four or five days before the close of Bysakh, witness was called from the field by his wife, and on coming to his house saw his daughter-in-law fallen on the ground, within the enclosure, and that his son, the prisoner Nuffer, lay trembling on the seat in the *verandah*. Prisoner said, "You are the chowkeedar, give notice to the rural police." On asking what had happened, the prisoner replied that he had been cutting wood and had accidentally wounded his wife. Witness then gave information to the police. There were two wounds on the left side of his daughter-in-law's head. Witness asked the prisoner how, if it were accidental

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two wounds had occurred, and prisoner then said that the deceased had struck him with a switch and that he had struck her in return. Prisoner did not run off, and was apprehended in the house. The wound above the ear of the deceased was but slight, that on the head was severe, the skull was laid open and the brain extruded. There had not been a previous quarrel between the prisoner and the deceased. The axe now in court belongs to the prisoner. It was lying at the door. The prisoner had been cutting wood. He expressed sorrow for what had happened.

These witnesses* prove the record of the inquest. The skull of the deceased was laid open and the brains came out.

* No. 2, Juggurnath Kulla.
" 3, Nubbin Koomar.
" 4, Gooroochurn Koomar.

The confessions of the prisoner before the police and before the principal assistant commissioner are proved by the subscribing witness.* In the former confession, the prisoner stated that his wife had bid him prepare some food for the children; that he had said do it yourself; that high words ensued, that she struck him with some brushwood, and that in a rage he cut her down with the axe which was in his hand. In the latter confession the prisoner states that while he was cutting wood, the axe slipped, and wounded his wife, who thereupon fell insensible; that he carried her into the house and gave her water; that they had previously a dispute about giving the children food and that she was a well behaved woman.

* No. 5, Muddun Koomar.
" 6, Modhoo Koomar.
" 7, Seeboo Dome.
" 8, Nobin Ghose.
" 9, Seikh Bundhoo Burkundaz.
" 10, Jaffur Khan Burkundaz.

No. 11, Keenee Domin is the mother of the prisoner, she states that in the morning she heard the prisoner and his wife disputing about the children's food.

These witnesses† state that the prisoner made confession to the effect recorded by the police officer.

† No. 12, Dunnae Sirdar,
" 13, Kant Chowkeedar.
" 14, Bungsee Chowkeedar.

The prisoner in his defence states that the villagers have conspired to take his life. He does not know how his wife was killed. He saw her lying on the ground. He told the police officer and the magistrate that the axe had fallen, and his wife had also fallen.

The jury,‡ whose names are entered in the margin, find the prisoner guilty.

‡ Koylasnath Chottopadhie mooktar. Jonaedun Sirkar.

The confession of the prisoner, as recorded by the police officer, is proved by unexceptionable testimony, and its tenor is confirmed by the evidence before this court. The statement made by the prisoner before the principal assistant is not a confession

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of guilt, but is on the contrary an exculpation, ascribing the death of the deceased to an accident. The defence before this court is vague, but it leans towards the statement made before the principal assistant. That statement is not entitled to confidence. It does not account for two wounds, or for the severity of the greater wound.

That the act was on some slight provocation may be admitted, but such provocation cannot be regarded as an extenuation of the crime. The murder of women for causes utterly trivial, is unhappily a frequent occurrence, and it ought to be put down. I therefore consider it my duty to recommend that a capital sentence be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) It is clear that the confession recorded at the thannah gives the true account of the murder by prisoner of his wife. This confession is satisfactorily supported by the evidence of those who found her dying in the house immediately after the brutal wounds were inflicted, one of which split her skull so that the brains protruded. The statement made by the prisoner's witnesses, that the axe had accidentally fallen on her, as she sat near him when he was cutting wood, is under the circumstances wholly impossible; and as there can be no doubt of the deliberate and wilful murder by the prisoner, we sentence him to suffer death as recommended by the commissioner.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MATABDEE SIRDAR MUSSULMAN (No. 2,) AND TEENCOWREE JOOGEE (No. 3.)

Hooghly.

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Case of MATABDEE SIRDAR MUSSULMAN and another.

The prisoners were convicted and sentenced as professional dacoits.

CRIME CHARGED.—1st count, dacoity with wounding on the night of the 10th August, 1847, in the house of Ramkant Chuckerbutty of Bordhol, thannah Lubsah, zillah Baraset; 2nd count, dacoity on the night of the 15th January, 1850, in the house of Hafez Sirdar of Sakareepotha, thannah Kaguzpookoorea, zillah Nuddea, and 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 7th July, 1856.

Remarks by the additional sessions judge.—The two prisoners are charged with having been concerned in the dacoity at Bordhol, on the night of the 10th August, 1847; with the dacoity at Sakareepotha, on the night of the 15th January, 1850; and generally with having belonged to a gang of dacoits.

Against them on the 1st count, is the parole evidence of one approver witness Budon Gazee This person confessed on 24th April, 1856, being then, and for nearly a year before, a prisoner in the Allipore jail; gave a full account of the affair; and named all the persons he could recollect as having been associated with him in it; and amongst them vere the prisoners. Before me he has described the incidents of the dacoity pretty much as he did before in his confession, and has again implicated the prisoners; but he now gives eight new names of persons concerned in the offence, and omits five of the fifteen he gave before. There is not on this count either the concurrent testimony of a second approver witness, or any corroborative evidence, and it is thus, in my opinion, not sufficiently proved.

On the second count is the parole evidence of two approver witnesses, Sona and Budon, but nothing further in corroboration. It has however been ruled by the sudder Court, on several occasions, that under certain circumstances, a court of justice would be justified in receiving the evidence of approvers alone as conclusive of the guilt of the accused; and that there is such a combination of circumstances in the case under review, I am now prepared to show.

S. N. A. 1854, II. 157.
S. N. A. 1856, I. 155.

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Not only have the statements of the two approvers been consistent throughout as to the incidents of the affair, the names of those engaged in it, and the complicity of these two prisoners, but they agree with each other in a very remarkable way; and that combination and collusion, which the court are of opinion is far from impossible under the present system, *was impossible in this particular case*

S. N. A. 1854, II. 157.

The witness Sona Hujjam confessed at Hooghly to this Sakareepotha dacoity on the 20th August, 1855, and the witness Budon at Allipore on 25th April, 1856. Sona had been a convict in the Allipore jail three or four years, but was transferred to the dacoity commissioner's office at Hooghly on 9th August, 1855, on expressing a wish to confess to several dacoities and to become an approver. The witness Budon was on the 25th July placed in the *hajut* guard at Allipore on a charge of dacoity; and on 16th August, 1855, he was convicted and imprisoned in the jail *which Sona had left seven days previously*. The *hajut* guard, it appears by the evidence of the jailor, witness No. 4, is so situated with reference to the jail itself, that persons detained in it have no means whatever of communicating with the convicts. Nor could the witness Budon have ever, when at large, had an interview with Sona subsequent to the latter's incarceration four or five years ago. Since 9th August, 1855, they have been thirty miles apart.

J. Floyd, witness No. 4.

Moreover Sona gave evidence *against* Budon in the trial of the latter in July last; so that even if collusion had been possible, which it was not, it would be absurd to suspect it *with* a witness *against* a colluder.

S. N. A. 1856, I. p. 32.

It deserves to be noted with respect to the general charge that the magistrate* of the Twenty-four Pergunnahs arrested both these prisoners, and made them over to the dacoity commissioner, having traced them into their village in Kishnaghur *without knowing that that they had ever been named in the dacoity commissioner's office;* and the approver Budon confessed to the magistrate of the Twenty-four Pergunnahs, the dacoities at Bordhol and Sakareepotha, besides those to be alluded to hereafter at Achera, Ghatboa, Sooltanpore and Ghantee, *before he had seen the dacoity commissioner.*

But on the general count we have separate evidence besides that of the two witnesses already alluded to; and there is also abundant proof of the prisoners having been for years notorious robbers and dacoits, and men of the most dangerous character for adroitness and ferocity. The approver witness Sona Hujjam deposes to having been associated with the prisoner Matabdee

* Magistrate's letter dated 12th April, 1856, with the record.

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in four dacoities besides those at Bordhol and Sakareepotha, viz.: first at Manderah, second at Sooltanpore, third at Brijbhaksha, and fourth at Manderah a second time. And I find on examining the record that the witness confessed to all these dacoities in August, 1855, and denounced the prisoners in three out of four of them. The second approver witness, Budon, tells me he was with both prisoners in several dacoities besides those mentioned in this calendar, and he specifies four; Achera, Ghatboor (or Balleegunge,) Sooltanpore and Ghantee. All these four dacoities were reported and enquired into, and the witness, in his original confession last April, denounced both prisoners in each of them. The Ghantee dacoity was at first reported as a case of theft only, but the true character of the offence was detected. In the Sooltanpore affair all the dacoits, who have confessed to it, have mentioned the circumstance of finding an iron treasure chest in the house which they were unable to force open, and the owner of the house stated this *at the time*. This witness affirms that the prisoner Matabdee commanded a gang of his own, the other prisoner Teencowree being a member of it under him, and he says the members when introduced* into the gang were always subjected to a burning or branding on the thigh *to try their mettle*. I have examined the persons of the witness and both prisoners, and have found the scars of the burning on each in the place indicated. The third approver witness, Sookoor Gazee, confessed to having been a professional dacoit to the magistrate of the Twenty-four Pergunnahs while a convict in the Allipore jail in March last. He swears now to having been in four dacoities with both prisoners, at Raiputul, Ghatboor, Soopookoor and Achera. The Soopookoor and Raiputul affairs have not been traced, but those at Achera and Ghatboor were so. In the first, witness originally denounced both prisoners, and in the second the prisoner Matabdee. He also declares both prisoners were in the same gang of which the prisoner Matabdee was the ringleader.

In the Achera dacoity, which occurred in 1849, both prisoners were named by the son of the owner of the house attacked as *probably* concerned in the crime, and the second prisoner Teencowree was arrested, the other evading search. The evidence was insufficient for conviction, and an enquiry into the character and pursuits of both the prisoners came to nothing, but it appears that the four witnesses who testified to the prisoner Matabdee being of good repute and got him off, *have all since been convicted of dacoity*. At the close of the same year the prisoner Matabdee again had his name brought before the magistrate as a dangerous character, and *this time* he was made to furnish security. In 1850, both prisoners were arrested with several

* See Dr. Baillie's report. He was available as a witness.

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others on suspicion of having been concerned in the Dhankooree dacoity, when the evidence failed against them all. But every one of those "several others" has since been either convicted of dacoity, or denounced by accomplices in subsequent offences of the kind. In January, 1851, both prisoners were recognized in the Dowlutpore dacoity and informed against that very night, but there was no other evidence of their complicity, and they again escaped. The prisoner Matabdee's character was then again enquired into, and the darogah declared that he could get no one of the many who knew him to be a professional robber and dacoit to venture to come forward and say so. In February, 1851, a confessing accomplice implicated both prisoners in the Sreenuggur dacoity. The prisoner Matabdee could not be found at first, but eventually both were arrested. With regard to the prisoner Matabdee, another enquiry into character ended in nothing, but his companion was committed to the sessions and sentenced to a long term of imprisonment. He appealed and was released. In December, 1851, one of the dacoits engaged in the Soobunkerpore affair was arrested on the spot and confessed. He denounced as an accomplice the prisoner Matabdee, who was tried and acquitted, such evidence alone being of course insufficient if not altogether inadmissible. He was however shown to be a man of bad repute, and was made to furnish security, the order being upheld on appeal to the sessions judge.

The prisoner Matabdee, No 2, denies his guilt on each charge, says, he does not know why he has been accused by the witnesses, and cites three witnesses to character, who all declare the prisoner is not only an old convicted offender, but known to his neighbours besides as a man of the worst character. The prisoner Teencowree, No. 3, makes the same defence precisely, and also calls two witnesses to character, who testify as strongly against him, as Matabdee's did against him.

I consider the evidence both on the second and third counts, to be abundantly sufficient to convict both prisoners on them, and I recommend a sentence on each of imprisonment for life with hard labor in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We consider that the additional sessions judge has come to a correct judgment as to the guilt of the prisoners, with reference to their being dacoits by profession. We have examined the cases in which mention of the prisoners as concerned in dacoities is contained. There is, from them, every reason to believe the present witnesses, who denounce them and we cannot suspect collusion between witnesses, one of whom is shewn to have procured the conviction of the other. We convict the prisoners of having belonged to a gang of dacoits and sentence them to transportation for life.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

LUKHUN MANJHEE SONTAL (No. 7,) JUTTA MANJHEE (No. 8,) DUSSMUT MANJHEE (No. 9,) AND KHEDUN MANJHEE (No. 10.)

Bhaugu.pore.

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Case of LUKHUN MANJEE SONTAL and others.

Conviction on overt acts of rebellion in the Sonthal insurrection upheld. Reprehensible leniency of punishment by the lower court censured.

CRIME CHARGED.—Aiding and abetting the Sontal insurrection and rebellion against the state with Kanoo Sooba, in having, according to instructions from Kanoo Sooba gone to take by force, one Beijnath Manjee to convey him to Kanu Sooba with intent to compel him to join his force and rebel against the State.

CRIME ESTABLISHED.—Same as crime charged.

Committing Officer.—Mr. H. Richardson, magistrate of Bhaugulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 8th March, 1856.

Remarks by the officiating sessions judge.—Prisoners Nos. 7, 8 and 9, plead guilty, No. 10, *not guilty.*

It appears from the deposition of witness No. 1, that the prisoners in Bhadoon, under the orders of Moorah and Kurrun Manjees seized witness and wished to take him to Kanu Thakoor, on his refusing, they took him forcibly away to a village named Amwar, declaring, that if he gave them 500 Rs. they would not release him, witness having previously given them 5 Rs. on demand. Sorye, Hurel rn and several men of witness's village Loureah perceiving the oppression which was being committed, came to the rescue and released him, the prisoners were then apprehended and taken to the Bownsee thannah. Witness No. 1, both before the police and the magistrate, omitted to assign a reason for the prisoners taking him to Kanu, nor was the question asked. Before this court, witness stated, that it was Kanu's intention to kill him. On being asked why he omitted this important point of his deposition before the police and magistrate, if true, he stated, that such questions were not asked him, and subsequently, he represented that Kanu wished him to join the insurgents, and rebel against the State.

Witness No. 2, corroborates the above statement.

Witness No. 3, merely saw the Sontals taking witness No. 1 away, but cannot depose to the apprehension of the prisoners; he deposes to the circumstances of the case, as he heard them; this irregularity has been brought to the notice of the magistrate,

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as his name is inserted in the calendar as witness to the apprehension of the prisoners.

Witness No. 4, is said to have attested the confessions, in the mofussil, of all the four prisoners, but I perceive that his signature is not attached to the defence; the magistrate has inserted this witness's name in the calendar, on identification of his hand-writing, which is insufficient and irregular; the magistrate has been directed to abstain from inscribing the names of witnesses, contrary to the record before him, on mere supposition.

Prisoner No. 7 states in his defence, that Moorah and Kurrun, under instruction of Kanu Thakoor, forced him to go to mouzah Loureah, and threatened to kill him, if he did not obey the order; afterwards they went, seized witness No. 1, and took him to mouzah Amwar, where the Loureah villagers apprehended him, and took him with the other prisoners to the thannah.

Prisoners Nos. 8, 9 and 10 make the same defence, and although No. 10 pleaded *not guilty* in the first instance, he afterwards confessed his guilt.

The jury find the prisoners guilty of the charge, in which verdict I concur, and sentence accordingly.

Sentence passed by the lower court.—The prisoners are to be imprisoned for four (4) years each without irons and to pay a fine of fifty (50) Rs. on or before the 23rd March, 1856, or in default of payment to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) We have perused the proceedings in this case, which were called for by the Court on view of the jail delivery statements, and see no reason to interfere with the judge's finding. Overt acts of rebellion were clearly proved against the prisoners. The punishment inflicted by the judge appears to us to have been much too lenient. Four years' imprisonment, without irons, is surely too slight a sentence for men who traversed the country with arms in their hands, levied contributions from the villages in the name of the Sontal leader, and were carrying off one of the head men of a village to his quarters by force, when they were seized by the villagers and made over to the police.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, Esqs.,
Officiating Judges.

GOVERNMENT AND MUDHOOSUDUN DOSS
versus
SHEIKH MOIZOODDEEN.

24-Pergunnahs.

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Case of SHEIKH MOIZOODDEEN.

Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of Mudhoosudun Doss, with plunder therefrom of property valued at Rs. 324-15-9, and maltreatment of the said Mudhoosudun Doss; 2nd count, receiving and keeping in his possession certain property, well knowing the same to have been obtained by the abovementioned dacoity, with maltreatment.

CRIME ESTABLISHED.—Receiving and keeping in his possession property, well knowing the same to have been obtained by dacoity.

Committing Officer.—Mr. H. L. Dampier, magistrate of Howrah.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 17th April, 1856.

Remarks by the additional sessions judge.—There was a dacoity on the night of the 15th March, 1856, at the prosecutor's house in the village of Shampore, within the jurisdiction of the Sulkea thannah, when the prosecutor and his family were a little roughly treated, and property belonging to him was carried off to the value of Rs. 325. The prosecutor said the following day, he recognised amongst the dacoits two of his fellow villagers of the names of Totaram and Luckun Sirdars, but this I do not believe to be t ue. He admits that when he reported the matter to the thannah, through Gokool Chowkeedar, he did not tell him about them, his relative, the witness No. 2,* who was with him in his house at the time did not hear of the recognition, and it is the detestable custom in these parts nearly always to "recognise" some two or three persons to satisfy the police. Would any one commit a dacoity at a house close to his own undisguised. The magistrate arrested, but soon released again, these two persons.

* Ram Poorkait.

The police were making an unsuccessful enquiry, when on the 3rd day after the dacoity, an old woman† from the village of Nelloaah (which is a mile or so only from Shampore, and where it was suspected the dacoits came from, and some houses had been searched the previous day) gave information which led to the prisoner's apprehension. She had overheard him talking about

† Wit. No. 10, Khooday Bewah.

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some property he had "found" on the Baniapota *maidan*. When seized, he denied to the burkundaz who captured him, all knowledge of the matter; but the darogah soon arrived, and he, most improperly, offered the prisoner both release and a reward, if he would comply with the demand. Prisoner repeated his denial. The darogah then told him he must carry him before the magistrate, when he became more manageable and produced from different places hidden in a pine-apple-bed of his own, first two brass *thalies*, then a brass *tusla* and *kutora*, next with a little pressing, a brass *abkhora*, and lastly a *kansee*. With the exception of the *kansee*, these things are all enumerated in the list of property given in by the prosecutor on the 16th March, two days before, and *that* he now says he forgot to write down. Every thing is identified. Witness No. 11, Negubbo Bewa, says she saw the prisoner bring a basket full of *something* from the *maidan* on the 17th March, which, on being asked, he said contained *cow-dung*. The search of prisoner's premises was conducted most irregularly. Of the four "respectable witnesses" to it* (Nos. 1, 5, 6 and 7,) one was the darogah himself, who conducted the search, another the burkundaz, who had the prisoner in his custody, and a 3rd a man (Sheikh Buxoo) notoriously on bad terms with the prisoner. He had been witness against the prisoner in a case of incendiarism, where the latter was acquitted, and prisoner had been witness against a female relative of his, who had been convicted of theft. The defence, however, renders all this of but little importance.

Wit. No. 1, Bungsee Mullik.

Witnesses Nos. 1, 5, 6 and 7.

* Regulation XX. Section 16, Clause 5.

Before the darogah, prisoner said he had "found" all this property on the Baniapota *maidan*, and that a few days before the dacoity he had met a gang of men on this *maidan*, of whom he recognised three or four, who made him drunk, and *who were evidently bent on a dacoity*. Before the magistrate he repeated the whole of this statement, with the exception of the words I have underlined. In this court he has merely spoken of having found the goods on the *maidan*. He says he was just about to take them to the thannah when the visit of the police anticipated him, and he adds he disclosed the finding to several persons whom he has cited as witnesses. These witnesses however all positively deny he ever did so to any of them, and they add he was in or near the village from 15th to 17th of March, and must have known there had been a dacoity and his neighbours' houses searched for the property.

Witnesses Nos. 12, 14, 15, 16, 17 and 18.

There is no doubt prisoner must have heard all the incidents

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of the Shampore dacoity and also must have guessed, if he did not positively know, the property retained by him, and which he says he picked up on the Baniapota *maidan*, was in all probability part of the spoil. He had brought it home 24 hours before the police visited him. To retain property found even without such suspicion and knowledge was a crime, but I cannot persuade myself those elements were here wanting. Property merely picked up without suspicion or knowledge of its having been stolen would not be studiously and carefully concealed piecemeal; and the finder would not have required such pressing to produce it on the police visiting him. It appears prisoner did not tell any one of his "find," and to being in the meeting with a gang of persons, "probably dacoits," on that same Banipota *maidan*, few nights previously, is most suspicious. Under all the circumstances of the case, I convicted* the prisoner on the 2nd count of the calendar, (omitting the maltreatment) *on strong* presumption of guilt, and I sentence him to ten years' imprisonment with labor and irons in banishment.

* "Receiving and keeping in his possession certain property well knowing the same to have been obtained by the abovementioned dacoity with maltreatment."

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money) The prisoner has been convicted upon sufficient evidence. We see no grounds for interfering with the finding or the sentence of the sessions judge, and therefore dismiss the appeal.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. SORROO SOOKHOO
versus
SONNOO JOOGEE (No. 1,) GOKOOL (No. 2,) KALLIAH JOOGEE (No. 3,) AND SINDOO JOOGEE (No. 4.)

Assam.

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Case of SONNOO JOOGEE and others.

Sentence of capital punishment was passed in a case of burglary attended with murder. Some accomplices imprisoned for life.

CRIME CHARGED.—Nos. 1 and 2, burglary and theft of property, valued at Co.'s Rs. 127-11, with the murder of Chundernath Ghose, *alias* Jopra, at the house of the deceased; Nos. 3 and 4, aiding and abetting in the above crimes.

Committing Officer.—Lieut. B. W. D. Morton, officiating magistrate of Durrung.

Tried before M jor Hamilton Vetch, deputy commissioner of Assam, on the 23rd June, 1856.

Remarks by the deputy commissioner.—The deceased, Chundernath Ghose, was a petty trader from Bengal, who had established himself in mouza Sillabundah, where he kept a shop, stated to be at the distance at which a call can be heard from the nearest neighbours. The prisoners are all Assamese of the neighbourhood; the prosecutrix, the wife or mistress of the deceased, also an Assamese of the same place. On the day preceding the night of the murder, she went to her father's to prepare some *chura*, intending, she says, to have come back at night, but that she was told by deceased she need not do so, as he would ask Dewai, then present, to remain with him. On the following day, Musst. Halimee came and said she had seen the deceased lying dead in the "*sotal*" of his house, where she, prosecutrix, immediately went and found that it was so; also that the chest inside the house had been broken open and the property, as detailed in the list, stolen; she then went and told the *patghery* of the mouza, who came and saw the dead body, after which she set off to the thannah, where she arrived next morning, gave information, and stated that she suspected Dewai, who, on being apprehended, first accused Sonnoo No. 1, Gokool No. 2, and Kalliah No. 3, as the perpetrators, they were taken; she afterwards added the names of Sindoo No. 4, and Batullee, (witness No. 2,) who were likewise apprehended. On examining the corpse, she observed the marks of two blows on the loins, two on the back, two on the thigh, one on the back of the neck, the neck was almost cut through, only two fingers of the flesh remaining unsevered.

The prisoners all pleaded "*not guilty*" to the charge preferred against them.

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Before the police, the prisoner Sonnoo, while he denied the perpetration of the murder, stated that, on the day preceding the night on which it took place, Sindoo Joogee No. 4, called him to the house of Batullee Joogee, where Sindoo No. 4, proposed that they three in company with Kalliah No. 3, and Gokool No. 2, should rob Chundernath's house; Batullee objected, whereon Sindoo No. 4, sent him to call Gokool No. 2, but having first seen Kalliah No. 3, who agreed to go; after this he went to Gokool No. 2, and returned with him to his house, he No. 1, and Gokool No. 2, then went to Batullee's who refused to join, but having doubts about this, he No. 1, and Gokool No. 2, concealed themselves in the garden and about the third "*pur*" of the night, Kalliah No. 3, Sindoo No. 4, and Batullee, came out, when he No. 1, and Gokool No. 2, followed them; and on arriving at the house of the deceased, Gokool No. 2, took post near the eaves on the south side, whilst he, No. 1, stood opposite the doorway and about two "*tars*" (i. e. twenty-four feet) off; the others went to the north-east corner of the house, where Kalliah No. 3, cut an entrance through the *tattee* or wall, by which he first went in, followed by Batullee and Sindoo No. 4, at that time deceased was sitting by a lamp near the *tattee* preparing his opium; Dewai was sleeping on the *chang* where the *dhan* was kept; Kalliah No. 3, was the first to strike deceased, by giving him a blow with his *nahor lattee*, on the right side of the neck, Batullee next struck him with a bamboo *lattee* on the left side of the neck, when deceased fell senseless, and was only able in a faint voice to say he had recognized them; on this, Kalliah No. 3, with his *(kuturee)* knife gave deceased a cut on the back of the neck and another on the throat, which almost divided it; Kalliah No. 3, then dragged deceased outside the door, when, there being still symptoms of life, Gokool No. 2, despatched him with a blow of his *juttee*, bamboo *lattee;* Kalliah then broke the lock of the large chest and took out about 100 Rs. Rajah Moharee, sicca and Company's rupees, one and a half rupee worth of pice, some beads, vessels of brass and *khasa*, *mooga* silk, thread, pieces of cloth, *ghee* and salt; of this property, Kalliah No. 3, took the rupees and beads, Batullee took the *ghee* and some salt and *areah* cloth, the remaining articles were taken by Sindoo No. 4; all went to Kalliah No. 3's house where they deposited the property: after this he went with Gokool to his house, and next forenoon returned to his own; he and Gokool being close to the eaves of the house, they were able to see the blows struck, the little remaining life was extinguished by the last blow, Gokool No. 2, struck deceased, after this he No. 1, entered the house with Gokool No. 2, he took nothing but was promised a share of the property, cannot say where Kalliah No. 3, deposited it, recognizes the bamboo *lattee* in court as belonging to Batullee and

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the wood one as belonging to Kalliah No 3, recognizes the *khasa buttee* to have belonged to deceased.

Before the magistrate, in his preliminary investigation, he retracted the foregoing confession, alleging that he had been taken to Burbhogeeah where the villagers beat him in presence of the police, and that being unable to endure the treatment, he made a false confession, he cannot say who those people were who ill-treated him and has no witnesses to prove it.

No. 2, Gokool, before the police whilst he denied the perpetration of murder, stated that six days ago, on the evening of *Sonibar*, Sonnoo No. 1, came to his house and asked him to give medicine to his wife, he No. 2, did so, and afterwards went with Sonnoo No. 1, to Batullee's, where Sonnoo No. 1, Batullee, Kalliah Joogee No. 3, and Sindoo No. 4, being assembled at Kalliah's No. 3's, it was agreed to rob the *Bangal;* they went, he followed, and Kalliah No. 3, with his *kutaree*, cut through the *tattee* on the north east corner of deceased's house which he entered followed first by Batullee, next Sindoo No. 4, and last Sonnoo No. 1, whilst he No. 2, stood by the eaves within six or seven cubits from the front door and saw Chundernath on his *guddee*, Dewai being asleep in the place where the *dhan* was kept; Kalliah No. 3, first struck deceased, giving him a blow on the left side of the neck with his *nohar lattee*, Batullee struck the next blow with his bamboo *lattee* on the right side of the neck, then Sindoo No. 4, struck him with his *lattee* on the left shoulder, and Sonnoo No. 1, on the right; deceased groaned twice or thrice, on which Kalliah No. 3, with his knife inflicted two gashes on his throat and killed him; Kalliah No. 3, and Sindoo No. 4, then dragged the corpse outside the door. States that the cut in the throat was about four fingers deep; Kalliah No. 3, afterwards broke the lock of the great chest and took out about 120 Rs. in silver, about two rupees worth of pice, a *kasa thal*, brass *thal*, three *kasa battees* and brass *kolas*, a pot of *ghee;* these were taken away by the four; Sonnoo No. 1, got a brass *thal* and two *kasa battees;* Kalliah No. 3 retained the cash; the rest of the things were taken to the house of Kalliah No. 3, by Sindoo No. 4, Batullee and Kalliah No. 3, which they entered, whilst he remained at the door of Batullee's house· Sonnoo No. 1, also kept the property he had at Kalliah's No. 3 and afterwards went with him to his house where he No. 2, Sonnoo No. 1, remained till the next forenoon, when he went to his own. Dewai Kolita left the deceased's house with the others; he got only two *chudders*, he and the rest mutually enjoined secrecy. Prisoner was close to the house and was able to see what took place inside. The *dao* found in Sonnoo's house is that with which he No. 1, inflicted the wound on the deceased, for, "I falsely said it was Kalliah No. 3, who had cut deceased's throat." Sonnoo No. 1, hid the brass *thal*

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in the Barbaggah jungle but he No. 2, could point it out; the rest of the property was placed in Kalliah's house; was told so bv Sonnoo No. 1, was promised a share, was formerly in jail for burglary.

This prisoner, before the magistrate, confessed that on the evening preceding the perpetration of the crime, it was arranged at Batullee's that they should rob and murder the deceased; and about the first *pur* of the night they arrived at his house, which Sonnoo No. 1, entered, followed in order by Kalliah No. 3, Batullee, Sindoo No. 4, and last himself. The deceased was first beaten and afterwards taken outside where he was killed by Sonnoo No. 1, with the *dao* now in court, with which he No. 1, inflicted two wounds, although he (Gokool No. 2,) was present, he neither struck a blow nor received any of the stolen property.

Kalliah No. 3, and Sindoo No 4, have throughout denied all participation in the crime charged, the latter, however, admits that Sonnoo No. 1, had asked him to join in robbing the deceased, which he refused to do, and warned him against

Witness No. 1, Dewai, deposed that one Saturday in Assin, he went to the deceased for *kani* (opium) who told him to take a *kodal* and set to work and raise earth, which he did; in the evening the deceased gave him food and *kani* and told him to remain the night as the prosecutrix had gone to her father's house; he went to sleep on the place where the *dhan* was kept whilst the deceased went to sleep on his *guddee;* about midnight he was awoke, when he saw Sonnoo No. 1, and Gokool No. 2, one with a bamboo and the other with a wooden *lattee,* beating the deceased, they afterwards took the deceased outside, when Sonnoo No 1, with a *dao* inflicted two wounds on his neck, which was almost cut in two, from these wounds he expired; after this Sonnoo No. 1, struck deceased another blow on the right or left shoulder, does not know which. At the time deceased came out of the house, witness also came out, and stood in the verandah, distant two or three *tars** whence he saw what passed. Gokool No. 2, held the deceased by the hair whilst Sonnoo No. 1, inflicted the wounds, Kalliah No. 3 and Sindoo No. 4, were standing near the eaves when the deceased was brought out, and they struck him with a split bamboo, after this Sonnoo No 1, went into the house and broke open the chest containing the property, he, witness, attempted to escape, when Sonnoo No. 1, seized and brought him back and by threats made him swear to secrecy and gave him the *kasa battee,* which he took, he then went home, as did the others. Sonnoo No. 1, told him if he remained silent as to what had taken place he should receive a further share of the property he,

* A *tar* is about twelve feet.

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therefore, did not tell any one. When the struggle first commenced he, (witness) got up and went near and recognized the prisoners. Deceased said to them, "Take my property, but spare my life" and called to him; it was then he went near and saw the prisoners, who being also near neighbours, he was able to recognize, it was after he came to the deceased's house for *kani*, that the prosecutrix went to her father's. Batullee remained at the market place and took no part in the affair, did not mention him before, not having been questioned respecting him, there was moonlight at the time; the *dao* and *lattee* in court are those with which the murder was committed; the *battee*, which he received, his sister secreted in the jungle; when arrested, and questioned by the darogah, he produced it, the prisoners entered the house by cutting through the *tattee* on the north side, they went out by the door, the *dao* was found in the house of Sonnoo No. 1, the wooden *lattee* in that of Kalliah No. 3, and the bamboo *lattee* in that of Batullee.

Witness No. 2. Batullee was also sent in a prisoner by the police, but released and admitted a witness by the magistrate.

Witness No. 2, Batullee, deposed that the prisoners, Sonnoo No. 1, and Gokool No. 2, came to his house one night in Assin, and asked him to join them in robbing the deceased, he told them he had never done the like, and warned them not to do so, they then went off; next day, I heard that the deceased had been murdered and his house robbed, he told Bogdul Medi, the darogah and others, what the prisoners had said to him.

Witness No. 3, Neerai, the wife of Gokool No. 2, deposed that Sonnoo No. 1, came and called her husband to give medicine to his wife, this was before sunset, he went and returned during the night, Sonnoo No. 1, came with him, they eat, and Sonnoo No. 1, remained till the morning, when he left; heard the following day of the murder.

Witness No. 4, Kerkhan, a boy of nine or ten years old, the son of Sonnoo No. 1, and too young to understand the meaning of an oath, was warned to state the truth, stated that he knew nothing except that on the night of the murder his father slept at home, what he stated at the thannah was false, he was tutored by Bobee and Kandoorah, and through fear of them he stated what was false, to the magistrate.

Witness No. 5, Musst. Puhita, a girl of nine or ten years old, daughter of Batullee, does not know the nature of an oath, being warned to speak the truth, deposed that the prisoners Sonnoo No. 1, and Gokool No. 2, whom she points out, came to her father and asked for water, and wished him to join them in robbing the deceased's house, which he refused to do.

Witness No. 6, daughter of the prisoner No. 4, Musst. Billagi, deposes that before the deceased was murdered she went to

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Batullee's where she found her father had gone for opium, Kalliah No. 3, was there, she came away with her father, who slept at home that night, she, from fear of the darogah, stated falsely on a former examination that Sonnoo No. 1, was at Batullee's.

Witness No. 7, Musst. Puthannee, the wife of Batullee deposes to the prisoners, Sonnoo No 1 and Gokool No. 2, having come to her house, and, as related by Batullee himself, urged him to go with them.

Witness No. 8, Musst. Pennoo *alias* Rookenee, deposed that about noon the day before the murder, when passing along the road, she saw Sonnoo No. 1, Sindoo No. 4, and Batullee standing at the door of the latter; it was said that Sonnoo No. 1, Kalliah No. 3, and Gokool No. 2, were the murderers, cannot say on what authority.

Witness No. 9, Musst. Asurdee, deposed that she went to the deceased's house on Saturday evening in Assin, where she saw Dewai and next day heard of the murder, she did not suspect Dewai.

Witness No. 10, Musst. Halmee, deposed that one day in Assin, on going to market, she saw the dead body of the deceased lying close to his house, the market-place is close by, gave information to his wife whom she had seen the day before at her father's, and where she told her she had come to prepare *chura*.

Witness No. 11, Horreemul, deposed that he recognizes the *battee* or cup in court as the property of the deceased.

Witness No. 12, Kekai Sykea, the father of the prosecutrix, deposes that she came to his house the day before the murder, and on hearing of it ran to the spot, where he followed and found her by the corpse, he went off for the Patgeeree, who sent for the darogah; did not suspect Dewai, as his daughter had told him that she had left him at the deceased's. Recognizes the *battee* as the property of deceased from its being broken.

Witness No. 13, Phapend Joogee, deposed that having missed some *dhan* on the night on which deceased was murdered, he traced it by the dropping to Gokool No. 2's house, where he was told by Gokool No. 2, and Sonnoo No. 1, that if he did not go away, he would be served as they had served some one last night. Heard of the murder on Sunday at noon from Chapoor, did not mention to him what the prisoners had said, but told it to Hurrinarain and his wife.

Nos. 14 and 15, Jadnoo Kewot and Dhoni Kewot deposed that on the day before the night on which the deceased was murdered, they went to his house for salt, but left the house about 10 *o'clock*, at which time Dewai was there, but the prosecutrix had gone away before they arrived.

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Witness No. 16, Meer Mozuffer Hosein, native doctor, deposed that he was ordered by Dr. Miller, to inspect the corpse of the deceased, which was lying on the (Angeenah) of his house, found the neck nearly divided by a cut from a sharp instrument, such as the one in court, there was a wound on the right arm, another on the same arm lower down. On the left side of the back there was the mark of a severe blow which might have been inflicted with the stick before the court; there was a wound on the chest apparently inflicted with the end of a bamboo or stick, there was a like injury on the groin; the body was that of a stout man of middle age.

Witnesses Nos. 17, 18 and 19, Adheeram, Bhogdul and Ashurdee, deposed to the above effect.

Witnesses Nos. 20, 21 and 22, Hemkanth, Jeepaye and Goonaram, prove the confessions made by prisoners, Sonnoo No. 1 and Gokool No. 2, before the police, and of Gokool No. 2, before the magistrate.

Witnesses Nos 23 and 24, Gandoo and Gorraye deposed to the manner in which the prisoners were apprehended.

Defence.—The prisoner Sonnoo No. 1, in his defence stated that the confession made by him before the police was false and extorted, by his being beaten, and he alleges that he passed the night of the murder in Gokool No. 2's house, that Goonaram Patgeeree has a spite against him as he was the cause of his being fined, he names two witnesses to his being at Gokool No. 2's house.

The prisoner No. 2, Gokool, states in his defence that he was beaten by the darogah, Jeepaye Patgeeree and the witness, and that the confession was false and extorted, and that he did not express before the magistrate, that he was at home on the night of the murder and names two witnesses to prove his defence.

No. 3, Kalliah, pleads that he was at his out-cultivation in mouza Pawnpore, names two witnesses to prove this.

No. 4, Sindoo, pleads that he was at the house of Kolie Booree, in the mouza Burbhageeah, on the night of the murder, and names two witnesses in support of this.

Opinion of the deputy commissioner.—There can, I think, be no doubt but that the eye-witness, Dewai, was passing the night in the house of the deceased, and although his evidence is lessened in value by his having concealed the crime and his having received at least one article of the stolen property as the price of secrecy, yet, as neither of the prisoners in their confessions have attempted to implicate him as a confederate, and as his passing the night in the house of the deceased appears to have been purely accidental and to have been at the desire of the deceased himself, possibly his being in the house was unknown to the prisoners, who may have calculated on finding the

deceased quite alone and one whose fate, as a Bengali, was likely to excite little or no sympathy from the Assamese; under these circumstances I think that his evidence may be relied on to the extent of his recognition of the persons engaged, more particularly as it is in general accordance with the confession of the prisoner Gokool. The other evidence is all of a circumstantial kind, shewing that the prisoners had been in communication with each other on the day or evening prior to the murder, the production and finding of the *lattee* and *dao*, the confessions made before the police by Sonnoo No. 1, and Gokool No. 2, and that of Gokool No. 2, again repeated before the magistrate, in which they acknowledged that they engaged in preconcerting the robbery, and that they were present when it and the murder were perpetrated, although they deny having been active agents, yet implicating each other as such, as well as the prisoners, Kalliah No. 3, and Sindoo No. 4, as accomplices, may be considered trustworthy, so far as to prove that they were parties in concerting the robbery, and present at the robbery and murder, and having entirely failed to establish the defence they have set up; I think the evidence sufficient to prove the charge against them and of which accordingly I convict them, the said Sonnoo No. 1 and Gokool No. 2.

In respect to the prisoners Kalliah No. 3, and Sindoo No. 4, I am of opinion that the evidence of the eye-witness Dewai, the implications of the prisoners Nos. 1 and 2, the admission made by Kalliah No 3, that Sonnoo No. 1, had asked him to join, and No. 4 having been seen in conversation with Sonnoo No. 1, on the day preceding the night on which the crime was perpetrated, affords a combination of direct and circumstantial evidence, sufficient to establish that they were present aiding and abetting in the crime, and of which charge I convict them.

Having found the prisoners guilty of the charges respectively preferred against them, i. e. robbery attended with murder of the most atrocious character, I am of opinion that an example by a capital punishment is called for, and in selecting one of the number, it appears to me that the evidence bears most strongly against the prisoner Sonnoo No. 1, as the principal in the first degree and that his own implication against the prisoner, Kalliah No. 3, is not borne out, for he makes Kalliah No 3 cut the throat or neck of the deceased when inside the house; but this is contrary to the evidence of Dewai and the confession of Gokool No. 2, before the magistrate, from which it would appear that the deceased was dragged outside before his throat was cut, and there is nothing to shew that there were marks of blood inside the house, which would have been found, if his implication of Kalliah No. 3 had been true; I would therefore propose that Sonnoo No. 1 should be sentenced to capital punishment; that Gokool No. 2 should be sentenced to imprisonment for life

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in transportation, and that Kalliah No. 3 and Sindoo No. 4, should be sentenced to fourteen years' imprisonment with labor in irons in banishment; and I refer the proceedings for the decision and orders of the Court of Sudder Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The deputy commissioner of Assam has stated the circumstances of the case very fully.

We entertain no doubt, from the whole of the evidence before us, direct and circumstantial, that the prisoners were all accomplices in the preconcerted robbery and murder of the deceased.

We therefore convict the prisoners of the crime of burglary attended with wilful murder; and seeing no difference in the guilt of Sonnoo Joogee and Gokool Joogee sentence them both to capital punishment. The prisoners Kalliah Joogee and Sindoo Joogee, who do not appear to have taken such an active part in the commission of the crime, are sentenced to imprisonment for life with labor in irons.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.
Officiating Judges.

GOVERNMENT

versus

Patna.

MUSST. LUKHIA.

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Case of MUSST. LUKHIA.

A woman convicted of murdering her infant was, with reference to precedents of the Court, imprisoned for life.

CRIME CHARGED.—1st count, wilful murder of her infant female child by exposure after birth; 2nd count, exposure of her infant female child with intent to destroy it.

CRIME ESTABLISHED.—Exposure of her infant female child with intent to destroy it.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 20th May, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty*.

Prisoner is a widow of seven years' standing, about thirty years of age.

From the evidence it is quite clear that a female child was taken alive from a well by the village authorities about 4 P. M. of the 29th of March, the child was made over to Musst Sham Kulia, witness No. 10, who chafed its limbs before a fire, and gave it food with every other precaution for its safety, notwithstanding which, it died that same evening. Notice was given to the police, who came to the spot, and having discovered

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through one Jeeobodh chowkeedar, certain suspicious circumstances regarding Lukhia, caused her to be examined by the Chumarins of the village, who usually officiate as midwives, these, witnesses Nos. 8, 9 and 10, all depose to Lukhia having at that time very recently given birth to a child.

Lukhia's defence is, that the child was born dead and thrown by her into the well, that had it been alive she would have taken care of it, at all events that she thought it was dead when she threw it into the well, that *suqai* re-marriage is practised among her caste, hence there could have been no object in her destroying her child, no necessity for avoidance of shame.

The law officer gives a *futwa* of guilty on the second count, in which I concur.

There can be no doubt of the second count of the charge being fully proved against the prisoner. The intent to destroy is manifest from the depth of the well, and the little probability of an infant thrown from a height of ten or twelve feet being able afterwards to make itself heard so as to attract attention. The plea of prisoner as to her thinking the child dead can be of no avail to her, there is no doubt that the child was living, and that it must have been more than usually robust to have survived the fall, and deprivation of food for some hours. I convict Musst. Lukhia, prisoner No. 8, of calendar No. 2, of exposure of her infant child with intent to destroy it, under circumstances that admit of no extenuation, and sentence her to imprisonment for fourteen years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoner admits that she threw the child into the well, but her defence is, that it was born dead.

This statement is proved to be untrue. It is clearly established by the evidence, that the hild was found alive, and must therefore have been born alive, and was living when thrown into the well. The prisoner concealed the birth until she was apprehended.

The judge states "that the intent to destroy is manifest from the depth of the well, and the little probability of an infant thrown from a height of ten or twelve feet, being able afterwards to make itself heard, so as to attract attention," and he finds the prisoner guilty of exposure of her infant "with intent to destroy it under circumstances that admit of no extenuation" and recommends her, "with reference to her evident ignorance," to be imprisoned for fourteen years' with labor. We cannot concur in the finding or the recommendation.

If the death of the child was the consequence, as the evidence proves, of the act committed by the prisoner with the intent to destroy it, she was guilty of murder.

There is nothing in any of the circumstances to lead to the

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presumption that she was not aware at the time that death would be the result of so inhuman an act. There is no evidence whatever on the record to show that after giving birth to the infant her mind was in such a disturbed state as to render her unconscious of what she was doing, or to delude her into the belief, that the infant was dead when it was living.

We therefore convict her of the wilful murder of her infant, and in conformity with the precedents of this Court in similar cases, sentence her to imprisonment for life with labor.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT AND GOWRAH NAIK

versus

RAM PUDDHAN.

Cuttack.

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September 13.

Case of RAM PUDDHAN.

Prisoner convicted of murder. From peculiar extenuating circumstances he was sentenced to transportation, instead of death.

CRIME CHARGED.—1st count, wilful murder of Needhee Naik, father of the co-prosecutor, Gowrah Naik; 2nd count, culpable homicide.

Committing Officer.—Mr. A. S Annand, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 17th July, 1856.

Remarks by the sessions judge.—Crime was committed on the 11th June, 1856. On that evening, plaintiff and the deceased of Borapoda village with four female relations were going home with wood cut from the jungles along the road leading through the lands of Goratangee, there they were met by Arut Naik and four Sourahs of Nyagaoon, who had an old quarrel about caste with them. The parties began abusing each other, and the Nyagaoon people pulled at the women's bundles of wood. Ram Puddhan, defendant, who is a peon of Nyagaoon, was felling wood and rushed up from the distance of twenty or thirty yards with his axe in his hand, struck Needhee Naik on the right side of the skull with his axe, inflicting a wound which made a cut four or five inches long, and broke the skull, and from which he died on the third day, such is proved before this court. The darogah, however, says that three others, viz.: Bullee Naik, Bisnoo Naik and Punchoo bearer were with plaintiff's party, but these deny all knowledge of the murder, and in that jungly neighbourhood, respectable men unconnected with both parties, could not be found. I cannot find any cause of private enmity between defendant and deceased. He must have

taken up the quarrel of his fellow-villagers, being a peon of Nyagaoon, for he is not of the Sourah caste. 1856.

The axe has not been found, but the nature of the wounds proves it to have been heavy. September 12. Case of Ram Puddhan.

The prisoner in his defence says that the witness Arut Naik killed Needhee Naik, but that he paid money to plaintiff and gave evidence against him; but this is a mere assertion, meant probably to weaken the trust in Arut's evidence, for he was one of the defendant's party.

The law officer finds defendant guilty of murder, and though no former enmity is proved and the act was probably unpremeditated, yet from the deadly nature of the weapon and on account of defendant having had some time for reflection whilst running about twenty-five yards with the axe in his hand, I consider that the crime does amount to murder. Had defendant been on the spot and concerned in the dispute I should recommend a lighter punishment, but must now beg leave to recommend that sentence of imprisonment for life with labor in irons in the Alipore jail be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present. Messrs. E. A. Samuells and D. J. Money.) The evidence in this case places the guilt of the prisoner beyond a question; and we accordingly concur in the sessions judge's conviction. Our only doubt has been whether looking to the wantonness of the attack, and the deadly nature of the weapon used, we should be justified in passing any sentence short of death. The extenuating circumstances in the case are, that the prisoner being a village servant, probably thought himself bound to defend his fellow-villagers; that there was no enmity between himself and the deceased; and that he did not repeat his blow, from which it may be inferred that he had formed no deliberate intention of killing his unfortunate victim. We allow the prisoner the full benefit of these facts, and sentence him to the secondary punishment of imprisonment for life with labor and irons in transportation beyond seas.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND BHOBANEE SAHOO
versus
DEEN MAHOMED (No. 1, APPELLANT,) HURREE SWAIN (No. 2, APPELLANT,) MUSST. JAMOONA (No. 3,) AND HURREE SAHOO (No. 4, APPELLANT.)

Cuttack.

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September 13.

Case of DEEN MAHOMED and others.

Appeal rejected.

CRIME CHARGED.—1st count, Nos. 1 and 2, burglary in the shop of Bhobanee Sahoo, prosecutor, by having broken two padlocks (one of a door and one of a chest,) and theft therefrom of property, valued at Rs. 1,050-15; 2nd count, receipt and possession of property stolen from prosecutor with the knowledge that such property was acquired by theft. Nos. 3 and 4, being accessaries after the fact of the said theft and in the receipt and possession of the said stolen property with knowledge that such property was acquired by theft.

CRIME ESTABLISHED.—No. 2, burglary and theft of property valued at Rs. 1,050-15, and Nos. 1, 3 and 4, being accessaries after the fact of the above theft, and in possession of part of the stolen property, knowing it to have been stolen.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 26th June, 1856.

Remarks by the sessions judge.—Plaintiff left his shop untenanted one night, and next day he found it had been broken into and property to the value of Rs. 1,050-15, stolen from a box, the lock of which was broken open: about 125 Rs. worth of this has been recovered.

Defendant No. 2, confessed before the police and the magistrate. This man keeps defendant No. 3, Musst. Jamoona with him in a house joining that of defendant No. 4, Hurree Swain, who allowed him to build it on his ground without charging rent; defendant No. 2, is a notorious bad character, and yet defendant No. 4, associates with him. Plundered property was found in a house for grain belonging to defendant No. 4, facing his dwelling-house, and with no access save by passing in front of his house. Property was found on the person of Jamoona No. 3, and in the house of No. 1, who was seen sharing the spoil with defendant No. 2, in the dry bed of the river by witness No. 17.

The law officer finds defendant No. 2 guilty of burglary and theft of property valued at Rs. 1,050-15, and defendant Nos. 1, 3 and 4, as accessaries after the fact of the above theft, and in

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possession of part of the stolen property knowing it to have been stolen.

Agreeing in this, I sentence defendants Nos. 1 and 2, both notorious bad characters, twice before imprisoned for theft, to seven (7) years' imprisonment each, with labor in irons, viz. five years, and two more in place of stripes; defendant No. 4 to imprisonment for five years with labor in irons, viz. three and two more in place of stripes, and defendant No. 3 to two (2) years' imprisonment with labor suitable to her sex.*

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) Three of the prisoners in this case have appealed; but we see no ground for interference. The evidence against the prisoners is clear and consistent.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND PRANKISHEN GOPE

versus

SHEIKH BOROMDEE (No. 6,) AND SHEIKH KANGALEE (No. 7.)

Mymensing.

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Case of SHEIKH BOROMDEE and another.

Prisoner under the circumstances convicted of culpable homicide, and imprisoned for fourteen years.

CRIME CHARGED.—Wilful murder of Probhoram Gope.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 19th July, 1856.

Remarks by the sessions judge.—The prosecutor, Prankishen Gope, is the son of the deceased. He deposes that on the 6th Jet last, Sunday afternoon, when his father, the deceased, was going to a goldsmith's shop in the village of Dhulla Aimam with 14 sicca rupees for the purpose of having a pair of anklets made, the prisoners and one Shookoorah Sheikh and others seized him in the way and severely assaulted him; that he was informed of the circumstance from Kangalee's mother and immediately repaired to the spot and found his father lying prostrate and besmeared with mud and groaning from pain, that he then took him to his house on a ladder, and that the deceased died thirteen days after from the effects of the injury he received at the hands of the prisoners.

The civil assistant surgeon, who examined the body of the deceased, deposes that he found marks of violence on the body, and that the cause of death appeared to him to have been occasioned by pressure on the chest, which prevented him from

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breathing, and by compression of the wind-pipe; that there were five ribs on the left side broken, and that the left eye was injured, and that the deceased might have lived thirteen days after the assault.

The prisoners denied the charge throughout. In this court prisoner No. 6, stated that the charge has been got up against him through malice, a dispute having existed between him and the deceased and others regarding a former case in which the deceased and the prosecutor and others were punished, and that the deceased died from cough and fever. He also pointed out certain discrepancies in the evidence of witnesses for the prosecution, No. 7 relied on the defence made by No. 6, and added that the witnesses deposed to enmity having existed between No. 6 and the deceased regarding a decree of court, but no such enmity is said to have existed between him and the deceased.

The law officer convicts the prisoners of culpable homicide and declares them liable to punishment by *acoobut*, and I concur in this verdict.

The attack on the deceased was cruel and wanton in the extreme. Several witnesses (Nos. 1, 2, 3, 4, 5, 6, 7 and 8,) depose to having witnessed the assault, and the deceased stated before his death to having been assaulted by the prisoners, and it appears from civil assistant surgeon's deposition that the deceased's ribs were broken and the wind-pipe compressed, which prevented him from breathing, and that he died from the effect of these injuries. Although the evidence recorded in the case is not sufficient to prove that murder was actually contemplated by the prisoners, still as no controversy or altercation is said to have taken place between them at the time when the assault was committed, so as to give cause for sudden provocation, I am inclined to believe that the *attack* was premeditated by the prisoners on account of enmity which is said to have existed between them. The prisoners examined several witnesses to prove that the deceased died a natural death, but in the face of the strong evidence against the prisoners added to the testimony of the civil assistant surgeon, I can place no reliance on this story, their evidence being moreover of a hearsay character. Under the above circumstances I convict the prisoners of aggravated culpable homicide, and considering the prisoners' offence to be of a very serious character, I recommend that they be sentenced to imprisonment for fourteen years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E A. Samuells and D. J. Money.) If we b lieved with the sessions judge that the assault on the deceased had been premeditated, we should have convicted the prisoner of wilful murder. We see no reason, however, to suppose that such was the case. It is not to be gathered from the evidence, and the fact of the assailants having been unarmed militates against it. We are of

opinion that the encounter of the prisoner with the deceased was fortuitous. The assault, however, was a most savage one and is clearly proved. We concur with the sessions judge in convicting the prisoner of culpable homicide and sentence him, as he recommends, to fourteen years' imprisonment with labor and irons.

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PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

LALL DOSS BYRAGEE.

Cuttack.

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Case of LALL DOSS BYRAGEE.

The prisoner was acquitted of murder as of unsound mind at the time of commission of the act.

CRIME CHARGED.—Wilful murder of Balmokond Doss and Nurhurry Mullick Byraghees.

Committing Officer.—Mr. W. Brown, deputy magistrate of Bhudruk.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 12th April, 1856.

Remarks by the sessions judge.—The particulars of this case are as follows.

The defendant and the two murdered men had lived in the mountain Koilee Doogree for about a month. Lall Doss reported that the goddess *Kallee* had eaten the other Byraghees; a search was made, the two bodies were found on the mountain with large stones heaped on them, two clubs were in the hut and a blood-stained axe was afterwards found near the spot.

The prisoner Lall Doss, confessed to the police that he murdered them both by blows of the clubs and also of the axe, and the wounds show that both were used; but before the magistrate and this court he confesses only to have murdered them both with the clubs. Lall Doss says that the other two Byraghees, eight days previously had bewitched him, as his eyes grew red and he lost his appetite and that therefore he killed them. He also says that the gods *Kallee*, *Nursing* and *Juggernath* killed them. Several witnesses were up the mountain with the three gods on the preceding evening; Gungaee Puddan witness No. 13, was then warned by Loll Doss to leave the place as *Nursing* (the god) was angry.

The belief of the defendant in witchcraft and that his gods delight in blood, seems to have led to the commission of the two murders. I agree with the law officer that he is guilty of the wilful murder of both Balmokond Doss and Nurhurry Mullick, and thinking that it would be a dangerous doctrine to hold that

1856. fanaticism extenuates the crime of murder, I recommend that sentence of death be passed on Lall Doss by the Sudder Court.

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On perusal of the above report, the following resolution was recorded by the Nizamut Adawlut No. 533, dated the 14th June, 1856. (Present: Messrs. B. J. Colvin and J. H. Patton.)

This is such a strange and unaccountable murder, that the Court before passing final orders on the case, wish to be furnished with information relative to the prisoner's state of mind at the time of his apprehension and since his subsequent detention. The Court find nothing on the record on this point, except the deposition of the native doctor, dated the 8th March, 1856, before the deputy magistrate. The sessions judge should direct the magistrate to make inquiries regarding the prisoner's state of mind through the medical officer and the jail establishment, and in any other way best calculated to lead to right conclusions on the subject. The Court are surprised that the sessions judge did not consider this point, with reference to the extraordinary accounts of the act given by the prisoner during the several stages of the proceedings. The papers are herewith returned for the sake of reference, if necessary. If any evidence be taken against the prisoner, he must be called upon for a fresh defence and a new *futwa* must be called for.

With reference to the above resolution, the following letter was submitted by the sessions judge, No. 8, dated the 17th July, 1856.

As directed by the Court in their Resolution No. 533, of the 14th June, I have the honor to forward the case regarding Loll Doss Byraghee.

I have taken evidence as to the state of his mind at the time of his apprehension and subsequent to that date. He confesses as before, that though he struck the blows by which Balmokond Doss and Nurhurry Mullick were killed, yet it was some god who killed them. Dr. Collyer says that he has a homicidal mania caused by religious delusion; and other witnesses speak to his silence and moroseness and filth while in jail; this is not surprising in a man who has lived alone like a complete savage in the woods and mountains for years. The magistrate, in his letter, says that his violence was at once checked by fear and that he is less sane than most Byraghees, all of whom are more or less mad. Loll Doss remembers now the origin of the quarrel, which was some matter of religion. He is a violent and dangerous fanatic. The law officer has changed his *futwa* and declares him liable to punishment by *deeut* instead of *kissas*.

I must now advert to the remark that "the Court find nothing on the record on the point of the state of the prisoner's mind save the deposition of the native doctor of Bhuddruck," but on a careful perusal of the evidence of the four witnesses in the

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* Anund Bhunj.
Gungaee Bhunj.
Gungaee Puddun.
Mahadeb Mohapater.

margin,* the Court will see that I did distinctly question them all in regard to his state of mind (*mezaj*) and that insanity was not then proved by the doctor or by these four witnesses. Dr. Collyer calls his disease homicidal mania, caused by religion and likely to recur. This would justify imprisonment for life in a mad-house, but a fit of brutal fury caused by bigotry should not be considered sufficient to prove him unaccountable for such actions as his. I must therefore beg leave only to change my recommendation to the Court as to his sentence from capital punishment to imprisonment for life in the Allipore jail, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) From the investigation which has been made in conformity with the Court's Resolution No. 533, dated 14th June, 1856, it appears to us that at the time of the commission of the murders, the prisoner was of unsound mind, so as to excuse him according to law. The medical evidence is to the effect that the prisoner labors under partial insanity, in the form of homicidal mania, caused by religious delusion; that he does not seem to have a proper idea of the magnitude of his crime; and that the mania comes on suddenly. We consider, from all the circumstances of the case, that the murders were committed by the prisoner under the influence of the mania, and the evidence as to his state since his apprehension warrants this conclusion. We therefore acquit him and direct, according to Section 3 Act IV. of 1849, that he be kept in safe custody pending the pleasure of the Government, with whom the local authorities will communicate in regular course. The Court remark that they did not overlook the evidence referred to by the sessions judge in his present letter; but in their resolution, they alluded to omission on his part to enquire from the medical officer his opinion of the prisoner's state of mind, and also to obtain the testimony of more competent witnesses to judge of it than that of those he solely relied upon.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND SHEIKH ADOO
versus
SHEIKH JUHEERUDDEEN (No. 1,) SUFFURUDDY (No. 2,) SOOKOOR MAHOMED (No 3,) SHEIKH BULLAKEE (No. 4,) SHEIKH JEEBUN (No. 5.) SHEIKH MOTEEULLAH (No. 6,) AND SHEIKH GUDDOO ALIAS GUDDYE (No. 7.)

Dacca.

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Case of SHEIKH JUHEERUDDEEN and others.

In a complicated case of homicide, several parties were variously convicted, and sentenced.

CRIME CHARGED.—Nos. 1 to 4, 1st count, wilful murder of Joynuddeen, the son of the prosecutor; 2nd count, beating the prosecutor. Nos. 5 to 7, 1st count, accomplices to the above murder; 2nd count, severely beating Joynuddeen deceased.

Committing Officer.—Mr. C. Jenkins, officiating magistrate of Dacca.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 12th July, 1856.

Remarks by the officiating sessions judge—The deceased went to the house, where prisoners Nos. 5 and 7, were sleeping, with what intent is not clearly ascertained, though there is reason to suppose that he intrigued with the wife of Sheikh Guddoo *alias* Guddye (prisoner No. 7). The prisoners Sheikh Jeebun and Sheikh Guddoo *alias* Guddye, (Nos. 5 and 7,) father and son, aware of the presence of deceased, rushed out to seize him, they were joined in the pursuit by their neighbours and relative, Sheikh Moteeullah (prisoner No. 6); they caught deceased, and brought him back to Sheikh Jeebun's (prisoner No. 5's) house, where they beat and bound him. They then held a consultation with some of the town's folk, which ended in their agreeing to charge deceased with attempted theft, and to colour the charge, a hole was made in the wall of the house.

The three prisoners confess to the above statement during the police investigation and before the magistrate. Towards dawn, it appears that deceased was put in charge of Ram Guttee Chowkeedar (witness No. 31) and these were then present at Sheikh Jeebun's house (prisoner No. 5,) Jynooddeen and others of the town's folk. Sheikh Asad was despatched to call the father of deceased and others, and when they were all assembled, Jynooddeen (not apprehended) abused plaintiff, because his son had been caught as a thief. Deceased and plaintiff were then dragged into an outer detached hut and there beaten by prisoners, Nos. 1 to 4, finally Sheikh Juheeruddeen (prisoner

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No. 1,) stamped on his chest and deceased immediately died Witnesses Nos. 1 and 2,* were in the hut at the time, and witnesses, Nos. 31 to 33,† were outside and heard the uproar. The civil surgeon‡ deposes that death was produced by effusion of blood on the brain caused by a blow on the head (the fatal issue hastened probably by the other injuries on the chest). Such a blow must have been given by a stick, and as the prisoners, Nos. 1 to 4, had no weapons, it was most probably inflicted on the deceased when first caught by one of the prisoners, Nos. 5 to 7.

* No. 1, Sheikh Aynuddeen.
,, 2, Sheikh Rubbeeullah.

† No. 31, Ram Guttee Chowkeedar.
,, 32, Sheikh Pandob Mollah.
,, 33, Tofanee.

‡ No. 11, Dr. W. A. Green.

The plaintiff and deceased, the prisoners under trial, and Aynooddeen, not apprehended, belong to the Ferazee sect, and the second beating given to the deceased was by the order of Jynooddeen, the sirdar or headman of the Ferazees in that division. The Ferazees are an organised society and recognise the authority of those placed over them by the head of their sect. Thus plaintiff accounts for the active part Sheikh Juheeruddeen, (prisoner No. 1) took in the outrage, by the fact that some time previously he had been shoe-beaten by a Punch of their persuasion for an assault on the wife of the deceased. The act of Jynooddeen resulted from a desire to show his power. The prisoners, Nos. 1 to 4, were his willing instruments. They beat the deceased at the command of a man whom they were accustomed to obey; it does not appear that they made use of clubs or weapons of any kind. It is probable that the deceased did not show much external mark of injury when he came into their hands, he was strong enough to sit upright and the same unconscious state to which he had been reduced might have been mistaken for the effects of fear, still the order to beat the deceased, seems to have been addressed generally to the people there assembled, and the prisoners came forward voluntarily, probably to pay off old grudges.

The prisoners in this court deny their guilt, and called witnesses who fail to establish their innocence.

The *futwa* of the law officer declares the prisoners guilty of culpable homicide and liable to *tazeer*.

It is on evidence that the immediate cause of death was the stamp given by Juheeruddeen (prisoner No. 1,) and my first impression was that he had been guilty of wilful murder; that he had taken advantage of the position in which he found himself to inflict a fatal injury on a fallen man, with whom he had previously cause for enmity. On more full consideration of all the circumstances of the case, I do not think intention to kill has been satisfactorily proved; at the same time, I think, that

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the injury to the chest of deceased was caused by his violence. That injury must have been sustained during the second beating, as it is not possible that deceased could have sat up as he is represented to have done after the fracture of his ribs described in the deposition of the civil surgeon.

I concur in the *futwa*, but as I consider the homicide to be of an aggravated nature, I recommend a sentence of sixteen (16) years' imprisonment with labor and irons in banishment on Sheikh Juheeruddeen (prisoner No. 1,); of ten (10) years with labor and irons on Suffuruddy, Sookoor Mahomed and Sheikh Bullakee (prisoners Nos. 2,. 3 and 4.) and I sentence Sheikh Jeebun and Sheikh Moteeullah (prisoners Nos. 5 and 6) to seven (7) years' imprisonment with labor and irons, and Sheikh Guddoo *alias* Guddye (prisoner No. 7) to five (5) years with labor and irons. The warrants for their punishment not to be issued till receipt of orders from the Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The facts of the case have been given by the sessions judge.

It is established by the evidence, that the deceased was first assaulted by the prisoners Nos. 5, 6 and 7. It was a violent assault, but there was provocation. He had entered at night the house in which the prisoners Nos. 5 and 7, who are father and son, resided, for the purpose of intrigue, or for some other unlawful object. The prisoners, however, after pursuing and apprehending him, beat him so severely, that when the chowkeedar and others came early in the morning they found him, bound hand and foot with ropes, very weak and faint and covered with bruises.

We cannot connect his subsequent death with the injuries he then received at the hands of these prisoners. There is no evidence to show that it resulted from them, and there is every probability that he would have lived, but for the subsequent assault. The act of the prisoners, however, was aggravated by a false charge of burglary, got up by them against the deceased, to support which, a hole was made in the wall of the room occupied by the prisoner No. 5, and a few articles of property produced, which he was accused of having taken. The assault which caused the death of the deceased took place subsequent to this charge, and in the absence of the prisoners, Nos. 5, 6 and 7. In the weak and distressed condition deceased was in, he was again subjected to maltreatment by the prisoners, Nos. 1, 2, 3 and 4. He was taken by them into a shed with his father, who was forced to look on, and there unmercifully beaten and stamped upon, until he died.

We see no extenuation in the fact that the beating was by the order of Jynooddeen, the head of the Ferazee sect, to which the prisoners belong. The prisoner No. 1, appears to have

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borne malice towards the deceased, and to have taken a more active part in the brutal assault than the others. It appears from the evidence that the death of the deceased was caused by this prisoner stamping on his chest, and fracturing his ribs.

It is not proved by which of the prisoners the blow on the head, deposed to by the medical officer, was given, nor whether in the first or second assault. It is stated by one of the witnesses to the second assault that *lattees* were used, but this statement is uncorroborated by other testimony. We have however, no doubt that it was inflicted in the second assault, as it is impossible, deceased could have spoken or sat up after receiving it, which it is proved that he did at a period some hours subsequent to the first assault. The civil surgeon has given his opinion that the injuries inflicted on the body were sufficient to cause death.

We convict the prisoner No. 1, Sheikh Juheeruddeen, of wilful murder, and sentence him to transportation for life with labor in irons, and the prisoners Nos. 2, 3 and 4, Sulfuruddeen, Sookoor Mahomed, and Sheikh Bullakee, as accomplices in the above crime to imprisonment in banishment for sixteen years with labor in irons. We convict the prisoners, Nos. 5, 6 and 7, Sheikh Jeebun, Moteeullah, and Guddye, of an aggravated assault, and sentence them to five years' imprisonment with labor in irons in the zillah jail.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, Esqs.,
Officiating Judges.

GOVERNMENT, SHEIKH BAHADOOR AND SHEIKH AGUN, CHOWKEEDARS

versus

JOGGYE CHUNG (No. 8,) SHEIKH ESOO (No. 9,) SHEIKH TOOTEE (No. 10,) AZIM MOHEE (No. 11,) SHEIKH ADYE (No. 12,) SHEIKH ABCAR (No. 13,) JEETOO MUNDUL (No. 16,) KHYRATEE MAHEE (No. 17,) SHEIKH SULLOO (No. 21,) SHEIKH BULLOO (No. 22,) DURBESH MAHOMED (No. 27,) JEBUNRAM DOSS (No. 29,) SHEIKH CHAND (No. 31,) SHEIKH DURBAREE (No. 32,) SHEIKH DEANUT (No. 33,) RAGIE CHUNG (No. 36,) JEEBA ALIAS JEAHOOLLAH (No. ?7,) GOURKISHORE SHOME (No. 20,) SHEIKH SHONIN (No. 28,) SHEIKH OOD ALIAS OODMUL (No. 30,) AND SHEIKH CHULAH (No. 35.)

Sylhet.

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Case of JOGGYE CHUNG and others.

Appeal rejected.

Lenient punishment by the lower court noticed.

CRIME CHARGED.—1st count, affray and riot attended with destroying the sight of one eye of each of the prisoners Nos. 11 and 12, and wounding most of the prisoners; 2nd count, affray and riot attended with arson.

CRIME ESTABLISHED.—Riot attended with wounding.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 23rd May, 1856.

Remarks by the officiating sessions judge.—This is a case of affray attended with wounding, &c., on both sides and of which the following are the particulars.

It appears that a talook, No. 4, Mahomed Moolaqui was purchased at public sale by Sheebpersad Doss, (the Government pleader of this court) in the name of his brother, Kaleepersad Chowdry, and possession was awarded to the latter under Act IV. of 1840, but he had not succeeded in obtaining possession of the whole of the lands, and that owing to the existence of ill-feeling between the said Kaleepersad Chowdry on the one side and Soorjoomeah and others on the other side (also purchasers of the talook) litigation regarding the said lands has for some time past been carried on by both parties, and on the day of the occurrence of the affray, Gourkishore Shome (prisoner No. 20,) having attempted to exact rent from one Chandoo Chung, whom his (prisoner's) dependents were forcibly carrying away from his house, the people of the village of Teelaparah, to

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the amount of twenty or twenty-five on the part of the said Chowdries, and forty or fifty persons on the side of Kaleepersad Chowdry assembled, and an affray and riot took place between both parties in which several persons on both sides were severely wounded; it also appears that during the affray the house of one Adoo was set on fire, but the crime of arson has not been proved.

The prosecutors (chowkeedars) gave information on the day of the occurrence at the thannah of Tajpore and the investigation held by the darogah, and the darogah of Nubbegunge, who was subsequently deputed, shewed the circumstances of the case to be as above stated, and the prisoners were forwarded by the police darogah to the magistrate for trial: all the prisoners before this court, pleaded *not guilty* and attempted to prove *alibis*; prisoners Nos. 9 to 14, pleaded that having heard a noise they went to the spot and were assaulted by the rioters and wounded by the balls fired from the *gooleil bans* (pellet bows). Nos. 15, 18 and 19, that they were not in the affray; No. 16 pleads that he went to the spot but was not engaged in the affray; prisoner No. 20, of the second party pleads that he went to the village with some laborers for the purpose of building his cutcherry house, which was pulled down and destroyed by Soorjoomeah and others, and that he, (prisoner No. 20,) had caused Chandoo Chung to be brought before him to realize the rent due from him; that in the mean time the said Soorjoomeah Chowdry and others, accompanied by several *lattials* came to the place, assaulted and wounded his men, and concealed some of the wounded persons; most of the prisoners of the second party also plead, that they had gone to build the aforesaid cutcherry, and on the affray taking place, as stated by prisoner No. 20, they (the prisoners) were assaulted, and some of them wounded, none of the prisoners cited witnesses in their defence, except prisoners Nos. 16 and 19, who named certain witnesses in the magistrate's court, but did not wish to have them examined before the sessions court.

The evidence of the witnesses in this case has satisfactorily proved the cause which led to the mutual affray, in which several persons engaged on both sides were more or less wounded, and although all the prisoners in the first instance denied the charge before this court, but from the tenor of their replies before the police, which has been verified by the subscribing witnesses as well as the prisoners' defence in this court, have clearly established the fact that all the prisoners were concerned and took an active part in the affray, in which several persons were wounded. I, therefore, in concurrence with the verdict of the assessors, convict prisoners Nos. 8, 9, 10, 11, 12, 13, 16 and 17 of the first party and prisoners Nos. 20, 21, 22, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36 and 37 of the second party, of affray attended

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with severe wounding and sentence them as below, prisoner No. 20 of the second party, I consider to be the ringleader and as prisoners Nos. 28, 30 and 35, were previously convicted in a case of affray attended with murder, I therefore award a heavier punishment to them. I acquit prisoners Nos. 14, 19, 34, 15, 18, 23, 24, 25 and 26, for want of sufficient proof; I have differed with the assessors as to the guilt of one of the prisoners, viz., No. 26.

Sentence passed by the lower court.—Imprisonment without irons for two years from this date and to pay a fine of Rs. 25, on or before the 1st proximo, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The judge and the assessors have concurred in convicting the prisoners and we see no reason, on a perusal of the case, to dissent from the conclusion at which they have arrived. We accordingly reject the appeal. We remark, however, that the sentence passed by the judge is very much too lenient for an affray so serious as this appears to have been. Punishment so slight can have little or no effect in checking that proneness to affrays for which the inhabitants of the eastern districts of Bengal are unhappily notorious.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. DEOGEE
versus
GONDOWREE GWALLA.

Bhagulpore.

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Case of GONDOWREE GWALLA.

Appeal rejected.

CRIME CHARGED.—1st count, wilful murder of Musst. Mukhia Chokree, deceased; 2nd count, culpable homicide of Musst. Mukhia Chokree, deceased.

CRIME ESTABLISHED.—Culpable homicide of Musst. Mukhia Chokree, deceased.

Committing Officer.—Lord H. Ulick Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 19th April, 1856.

Remarks by the officiating sessions judge.—This case was tried by the aid of a jury* on the 18th and 19th April, 1856, at Monghyr.

* Ahmud Ally,
Nath Sohye,
Gooroodyal Singh.

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The prisoner was charged; 1st count, with wilful murder of Musst. Mukhia; 2nd count, culpable homicide.

The circumstances of this case are briefly these:—While the prosecutrix was employed in her opium-field in the month of Phagoon, which is one *russee* from her house, her daughter, aged ten years, remained at home. The prisoner was working in an adjoining opium field, which he left and went to his house; shortly afterwards, the prosecutrix heard that prisoner was beating her daughter, she ran home and saw him maltreating and striking her with his fists, she enquired the reason, prisoner told her that she had stolen some grain from his house, he then took up a stone (weighing about 1 seer and 10 chittacks) threw it and struck her on the left side of the chest, at a distance of about five or seven paces off, she fell insensible to the ground; the prisoner then went away, and the mother applied remedies without benefit, and she died the following morning from the effects of the blows she had received, as she had not been previously indisposed. Information was given at the zemindar's cutcherry, when Gholam Ally Burahil apprehended the prisoner, who was eventually taken to the Sheikpoora thannah, the darogah proceeded to the spot, inspected the body, and forwarded it for the civil surgeon's examination, after himself holding an inquest on it. There are some few discrepancies in the prosecutor's statements at the thannah and before the magistrate immaterial to the issue of the case.

Witnesses, Nos. 1 and 2, depose to the fact of the assault, having seen the prisoner strike the deceased several hard blows with his fist about the head, chest and back, and state that after they prevented his maltreating the girl, he took up a stone, produced in court, and threw it at her with great violence, which felled her to the ground insensible, the mother then applied remedies to the bruises, but without any effect, they were aware that the girl died the following morning. The prisoner's boy, about four years old, came into the opium-field, and told him, the deceased had stolen some grain out of his house, which was the cause of the assault. The girl was not previously indisposed, nor did any enmity exist between the parties prior to this occurrence.

Witness, No. 3, deposes to apprehension of prisoner, and he is entered in the calendar, as a witness to the *sooruthal*, he merely saw the corpse, but did not examine the injuries sustained.

No. 4, witness, merely bears testimony to the prisoner's apprehension. Nos. 6 (witness absent) and 7, attested prisoner's confession at thannah, when he stated, that on the 24th February, while engaged in his opium-field, his boy, Mutteah, came and told him that deceased had stolen the grain from his house, he ran from the field and went to prosecutrix's house,

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where he found one and half seer, valued about two pice, bound in deceased's cloth, he struck her several blows with his fist, and then took up a stone which was in prosecutrix's enclosure, threw it at her, and it hit her on the side, he went home and the girl died the following day; he adds that the witnesses to the fact were present at the time. Witnesses, Nos. 8 and 9, attested the prisoner's confession taken before magistrate on the 26th February, 1856, which is precisely similar to that made before the police, but he adds, that he had no intention of killing the deceased. The prisoner varies his defence before this court by stating, that after he had assaulted the deceased, she took a stone, threw it at him, which he picked up and struck her with it on the lower part of the back.

Before taking the deposition of the civil assistant surgeon, from the evidence adduced on the trial, it appeared to me, that the blow she received from the stone, weighing one seer and ten chittacks, was the cause of death, but Dr. Duka is of opinion, that the chief cause of death was the injury sustained in the head. The prisoner was doubtless provoked to find the deceased had stolen some of his grain, but still highly culpable in his violent manner of resenting it. The jury find a verdict of culpable homicide against the prisoner, in which I concur, and sentence accordingly.

Sentence passed by the lower court.—Five years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The appeal of the prisoner is a confession, and urges nothing in extenuation, except that the deceased had been stealing his grain. The sentence is a very lenient one, and we see no reason to interfere.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND MADHUB DEY,

versus

CHOTTO OODYE SAWUNT (No. 1,) LOTOO SHEE (No. 2,) GOUR SAHOO (No. 3), BORRO OODYE SAWUNT (No. 4,) AND NOBEEN SAHOO (No. 5.)

Midnapore.

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Case of CHOTTO OODYE SAWUNT and others.

Evidence in a case of murder considered incredible, and prisoners acquitted.

It was remarked that the true facts of the case are probably yet to be discovered.

CRIME CHARGED.—1st count, wilful murder, in having so maltreated the father of the prosecutor that he immediately died of the effects of beating or of suffocation; 2nd count, accessary after the fact of the murder.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, sessions judge of Midnapore, on the 27th June, 1856.

Remarks by the officiating sessions judge.—The *futwa* of the law officer finding two of the prisoners guilty, declares them liable to *seeasut*, but acquits the other three: not concurring in this acquittal, I beg to refer the case for the orders of the Court of Nizamut Adawlut.

The circumstances of the case are as follows:—

The deceased Komul Dey, a headman of the village of Khola, had for a long time rendered himself obnoxious to the other inhabitants in various ways, and appears to have sought protection from apprehended violence more than once.* On the 25th Choit, 1262, B. S. corresponding with 6th April, 1856, a "*sheeb-jatra*" took place in the village. Komul Dey deceased went after night fall with his servant Gyaram† Duloee to the shop of Gour or Gorachand Sahoo, prisoner No. 3, and Nobin Sahoo, prisoner No. 5, for the purpose of purchasing oil, for the festival. He is there stated to have been violently assaulted by the prisoners and others; was never again seen alive, and his body was found next morning in a *maidan* of a neighbouring village, Banskhal, under the following circumstances. Madhub Dey, the prosecutor finding that neither his father nor Gyaram came back, had search made in every direction that night without success. Two men‡ were sent to the shop of the prisoners Gour and Nobin Sahoo to enquire for the deceased, but were informed he had not been there, this occurred between 11 and 12 o'clock at night. The prosecutor and others towards the morning went in search to Gyaram

* Prosecutor's deposition.

† Witness No. 1.

‡ Wit. No 8, Kalee Mytee.
" " 39, Muthoor Duloee.

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Duloee's house, found him alone lying there unable to articulate; on being questioned, he put his hand to his forehead, a sign interpreted by Madhub Dey, as intimating his father's death.

The following forenoon the prosecutor gave information to the police. He found the chowkeedar of Banskhal had arrived at the thannah before him, and reported that a corpse had been found as above stated. The police darogah, &c. proceeded to the spot, and found it to be the body of Komul Dey. The appearance it presented, left no doubt that a murder had been committed.

The prisoners were seized on the suspicion of the prosecutor, and the informatior of Gyaram Duloee, witness No. 1; prisoner, No. 1, Chotto Oodye Sawunt, and prisoner, No. 2, Latoo or Lotobur Shee, confessed before the police. The first to the full extent of joining in the attack on the deceased, and the second to his being a principal in the second degree. They repeated their confessions, though in a modified form, to the magistrate, but admit enough to show them to be, the first an accomplice, the second an acces. ıry after the fact. These confessions are fully proved by the witnesses, and are corroborated by circumstances, leaving no doubt of their genuineness.

The evidence of Gyaram Duloee, witness No. 1, which is throughout consistent in material points, is to the effect that he accompanied his master to the shop of the prisoners Nobin Sahoo and Gour Sahoo, that as Komul Dey was bargaining, the five prisoners assisted by others folded a cloth round his face, and began to beat him, that he tried to give the alarm, when two men seized, gagged and beat him till he was insensible, and then deposited him in a hole near his own house. After this, deceased was not seen, nor was any trace of him found till the next day, when his body was discovered by the chowkeedar* of Banskhal. The confessions of two of the prisoners however are a guide to ascertain what had occurred in the interim. They state that the body was carried by them and their accomplices through a bamboo jungle to a "*teel keyt*" belonging to Latoo Shee, prisoner No. 2, or as mentioned by a witness† to his brother Kanto. There they put it down for a minute; then proceeded by a tank called Brahmin Pushkornee, left the body where it was found.

The witnesses to the *sooruthal*‡ depose that the plant in this field for two or four cubits had been newly broken down. Narain Barooah, witness No. 24, says that he had gone into the aforesaid bamboo jungle, was alarmed by noises, saw several men going to the east, but whether carrying a body or not, could not say; he had stated this however in

* Wit. No. 28, Lotobur Mal.

† No. 6, Urjun Jana.

‡ No. 5, Pitumber Jana.
„ 6, Urjun Jana.

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the magistrate's court. The above nevertheless is corroborative of this portion of the statement of the confessing prisoners. The witnesses* to the *sooruthal* as also No. 31, Notobur Sawunt state the condition of the body when found, and the recovery of the bamboos not far from it, and further depose that marks of blood were visible under the eaves of the west door house belonging to prisoners Nos. 3 and 5, Gour Sahoo and Nobin Sahoo; that fresh earth had been plastered over without extinguishing them, and that a portion of the floor of the house had been renewed. That the heavy bamboo produced in court and weighing four seers and upwards was found in the cross beams in the said house, and then bore marks of blood.

* No. 5, Pitumber Jana.
" 6, Urjun Jana.
" 7, Nundulal Pundit.
" 8, Kalee Mytee.
" 9, Sartuk Munna.

The witnesses† under the heading of "circumstantial evidence" state that as they passed Brahmin Pooshkornee, they saw several men carrying a corpse which on enquiry they were told was that of Komul Dey.

† No. 23, Prem Doss.
" 26, Modhoo Majee.
" 27, Tunoo Sawunt.

Such is the substance of the evidence for the prosecution; that for the prisoners either fails in its object or contradicts the defence.

The body arrived in too decomposed a state for the medical man to give a decided opinion. He believes deceased was suffocated to death. The skull was fractured, and an incised wound over the right temple.

It only remains, therefore, for me to notice the two principal points set forth by the law officer for discarding the evidence of the principal witness, and the circumstantial evidence as to the first point; surprise is expressed that the prisoners should have allowed Gyaram to go in safety to which I would reply, that Gyaram was not the object of their revenge, but Komul Dey Again objection is taken to the date on which the evidence of this witness is said to have been written down, viz.: the 9th of April, when both he and prosecutor aver it was taken on the 7th. The darogah should, no doubt, have done this at the earliest possible moment, but is his omission to invalidate the evidence, and are we to believe his report or the evidence of these parties on their oath. The aforesaid objection, coupled with a foregoing argument would lead to an inference that the evidence was concocted on the confessions, but I cannot think so; for Gyaram, witness No. 1, mentions four men not named in the confessions, and omits mention of one. Moreover, the darogah bases his proceedings on the information he received from this witness and the prosecutor, and it is quite possible he acted on it, though he may not immediately have recorded it.

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In regard to the second point, I am free to admit the circumstantial evidence is strange, but that does not necessarily make it false. The conduct of these witnesses under the circumstances is considered by the law officer suspicious, and their evidence unworthy of belief. But all this I think is sufficiently accounted for by a consideration of Latoo Shee, prisoner No. 2's confession of the number accused; of the number probably banded to revenge themselves on the deceased on a favorable opportunity offering; and relationship. I dare say they were, not much surprised at the event, though unaware of it until then, and of course were undesirous of being mixed up with it in any way. However strange their account or deviating the story of some of the witnesses from that given previously, there can be no doubt a cruel murder occurred, and allowing every latitude, I think there is quite sufficient testimony to corroborate that given by Gyaram Duloee, witness No. 1, and I would convict the prisoners of the murder and sentence them to imprisonment for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) We regret that we are compelled to dissent from the finding both of the judge and the law officer in this case.

When the prosecutor laid his original information before the police, he stated that his father (the deceased) had, on the day of the murder when leaving home, taken gold and silver ornaments with him to the value of Rs. 48-8, intending to pledge them with the mohajun of a neighbouring village, but that he had been dissuaded from doing so by Kistomohun Adhikarry, Oodoy Sawunt and others of the accused, who took him with them to Kistomohun's house; that after his return thence he proceeded with the chowkeedar, Gyaram, towards the oil shop, which is supposed to have been the scene of the murder and was not seen again until he was found dead in the Banskhali *maidan* with injuries on his person, which left no doubt that he had been murdered. The ornaments had disappeared and we hear nothing further of them throughout the enquiry, although their disappearance obviously suggests a very different cause for the murder from that assigned by the prosecutor, who from the first attributed it to revenge and pointed suspicion against the prisoners and others, who were known to entertain unfriendly feelings towards the deceased.

It is especially remarkable, when viewed in connection with the subsequent statements of the prosecutor and his witnesses, that Gyaram Duloee, (the chowkeedar of the deceased) who was the last person seen with him, is scarcely alluded to by the prosecutor in his information. He does not mention that he has seen him since his father's disappearance. Nor does he express any wish that he should be examined.

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On the very face of the case, as it was presented to the darogah, there was clearly a possibility, that the murder might have been committed by Gyaram Duloee, for the sake of the ornaments, which the deceased had about him, and in any case it was obviously of the first importance that this man should be examined without loss of time, in order to ascertain what light he could throw on the proceedings of the deceased after his departure from home.

The darogah, however, does not appear to have gone near Gyaram Duloee at the commencement of the proceedings. He seems to have occupied himself entirely with the arrest of the numerous parties, who were suspected by the prosecutor, because his father had by his oppressive proceedings given them cause for enmity. We have no trace of Gyaram until he appears as a witness emitting a deposition, which is dated on the 9th of April, but is not forwarded by the darogah until the 11th. We see strong reason for believing that this deposition was not recorded before the 11th. On the 9th was taken the confessions of *Chota* Oodoy Sawunt and Latoo Shee. In these confessions no mention whatever is made of Gyaram, nor does the darogah ask a single question concerning him, a fact which must appear quite inconsistent with the darogah's assertion that Gyaram's deposition was taken on that day, when it is considered that Gyaram alleged in this deposition that he had intruded into the assembly of the murderers when they were in the act of perpetrating their crime, and that he had been severely beaten by them and thrown into a ditch outside of the house. No one, we think, can doubt that if Gyaram's story had been known to the darogah on the 9th, the confessing prisoners would have been questioned respecting his presence at the murder and the assault which had been made upon him. Nor is it easy to believe that if the darogah had really obtained the deposition of so important an eye-witness on the 9th, he would have delayed reporting the fact to the magistrate until the 11th; we have no explanation whatever of the reasons which induced Gyaram to withhold his evidence for so many days, nor is the darogah's failure to examine him at the outset of the enquiries in any way accounted for. The judge says that the darogah based his proceedings on Gyaram's evidence, but this is an entire mistake. The prisoners were apprehended, as the darogah himself states, on the charge of the prosecutor which was founded solely on his own vague suspicions; and Gyaram's name as we have already remarked does not appear in the darogah's proceedings before the 11th.

The evidence of Gyaram, the sole eye-witness in this case, appears before us, therefore under very suspicious circumstances, and the unfavorable impression which these are calculated to produce is strengthened by the internal character of the evi-

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dence, and by the difficulty which we find in reconciling it with the statements of the prosecutor and of the witness Chooramonee Doss.

Gyaram's story is that for some cause which is not satisfactorily explained, the deceased preceded him into the house of Nubeen Sahoo and that on his arrival, he found the prisoners and a number of other persons assembled. No objection appears to have been made to his entering, although as the case for the prosecution is, that the prisoners had assembled with the deliberate intention of murdering the deceased, we should have expected to find that every precaution had been taken to prevent intrusion. The attack on the deceased he states was commenced in his presence. No notice however is taken of him apparently until he remonstrates, and then three of the murderers turn upon him, beat him and throw him into a ditch, where he lies until the prosecutor and two others discover him. Now this story is not only obviously improbable in several respects, but is at variance on very material points with the witness' mofussil deposition. To the darogah he said that the assault had already commenced when he arrived, that it took place outside the back door of the house, and that he saw the prisoners carry off the corpse to the eastward; all these statements being quite irreconcileable with his later depositions. He further stated at the thannah that he was thrown down by the murderers outside the house, that he got up after a little and went home, and that he subsequently absented himself in consequence of the threats of the murderers. Three persons whom he names came he said to see him at his house and question him regarding the deceased, but the prosecutor was not amongst them. Now the prosecutor states in his evidence, that he did go to see Gyaram and that he understood from his signs that his father was dead. But neither of these statements are reconcileable with the recorded proceedings of the prosecutor and the police. Had Gyaram been discovered lying speechless on the night of the murder either in his own house or in the ditch near Nubeen Sahoo's, it cannot be doubted that the prosecutor would either have had him conveyed to the thannah, or that he would have brought the police to Gyaram's house for the purpose of interrogating him at the earliest possible moment. But so far is he from doing this that although he states in his information before the darogah, that the deceased had gone out accompanied by Gyaram, he makes no further reference to this individual, and after mentioning his conjectures as to the cause of the murder and the parties who had perpetrated it, says distinctly that the whole village is against him and that he has no witnesses. It is quite impossible that he could have made such a statement, if he had been aware, as he would now have us believe, that he had at hand, in a servant of his own family,

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a witness who had been present at his father's death and had himself been maltreated on the occasion. Other improbabilities and inconsistencies in the evidence of Gyaram might be pointed out; but we have stated sufficient to show that no reliance whatsoever can be placed on his testimony. We see every reason to believe with the law officer, that Gyaram's evidence was concocted to bolster up the confessions.

The evidence of Chintamonee Doss, Prem Doss and the other witnesses to the removal of the corpse and the noise in the Talee's house, on the night of the murder, is admitted by the judge to be '*strange.*' We consider it simply incredible. The first of these witnesses says, that he went to the oilman's house to purchase oil at the hour, which is assumed throughout the case to have been that of the murder. That Nubeen Sahoo one of the accused came out and served him as if nothing unusual was going on, and on his expressing surprise at the noise in the house, instead of endeavouring to lull his suspicions, told him to mind his own business or that he should have his bones broken. Before the magistrate he declared that the oilman told him without hesitation that they had murdered "that *budzat* Komul" and were removing the body; but this he did not think it prudent to repeat in the sessions. It is further to be observed, that he makes no mention of Gyaram, although, if Gyaram's story were true, his expulsion from the house must have taken place at the time of which Chintamonee speaks and the latter must either have witnessed it or seen Gyaram lying outside.

The other witnesses depose to travelling from different places and finding themselves accidentally, at the same hour, on the night of the murder, at a tank called the Brahminee Pooshkornee where they saw a corpse carried past by the prisoners and their accomplices. Each of these witnesses in turn questioned the murderers. Two of them were told frankly in reply that the party they saw had murdered Komul Dey and were removing the body. The other was informed that if he revealed what he had seen he would be murdered. The witnesses were not aware of each other's presence, though the tank does not appear from the police map to be a large one and they admit that they did not mention what they had seen to any of their friends or neighbours. It is quite impossible to believe such gross improbabilities.

Marks of blood are said to have been found on a bamboo in Nubeen Sahoo's house and on three several spots on, or near the premises; and the floor of one of the huts is stated to have been scraped and new laid. The owner of the house, however, declared these spots to be the marks not of blood but of pawn. No medical evidence was taken on this point, and it seems strange that Nubeen Sahoo should have taken such pains to efface the blood stains from one part of his premises and left

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them untouched in others, which appeared to have been equally public. We have no trustworthy evidence of the stains seen in Nubeen Sahoo's house being stains of blood, nor are they connected by any evidence with the prisoners.

There remains then nothing against any of the prisoners, but the confessions of two of their number (*Chota* Oodoy Sawunt and Latoo Shee) recorded before the magistrate and the police. The law officer relying on the confessions concurs with the judge in convicting these prisoners, and the judge has recommended that they should be sentenced to imprisonment for life. On looking at the confessions before the magistrate, however, to which alone we could attach any weight, we find, that they amount at most to acknowledgments of privity or misprision of felony. Both of the prisoners deny that they had any previous knowledge of the intent of the murderers, or that they assisted in any way in the commission of the crime. One says, that he was accidentally present, but took no part in the proceedings and was beaten by the murderers for refusing to join them. The other declares, that he came in after the murder and was going to run away, when he was seized and forced by the threats of the murderers to assist in carrying the corpse. But we place no confidence, whatever, in these confessions. The evidence in the case has manifestly been fabricated; and parties who have not hesitated to bring forward false witnesses would certainly not scruple to cajole prisoners into criminating themselves. The confessions before us have, to us, all the appearance of these statements, which prisoners are easily induced to make before a magistrate on the assurance that they will be released, or admitted as witnesses. The prisoners repudiate them in the sessions court, and unsupported as they are either by internal or external evidence, we feel it impossible to convict upon them. We strongly suspect that the true facts of this murder have yet to be discovered. We acquit the prisoners and direct their immediate release.

PRESENT:
E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
SREEMOTI PUDDA ALIAS PUDDEE OR KALLIR MAH.

Tipperah.

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Case of SREEMOTI PUDDA *alias* PUDDEE or KALLIR MAH.

Conviction in a case of murder by causing abortion, &c. Severe penalty enforced.

CRIME CHARGED.—Wilful murder of Musst. Shutti by the administration of drugs to produce abortion.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 24th July, 1856.

Remarks by the sessions judge.—The deceased, a married woman, living latterly apart from her husband, appears to have indulged for the last two years in an illicit connection with one Pitamber Thakoor. The result was pregnancy, and with it the usual fear of exposure, which induced the unhappy woman to seek, or to be persuaded to seek, the means of destroying the unborn child. Her paramour had left her and gone to Chittagong, a month or two before the crime occurred, probably to avoid the scandal likely to ensue on discovery of the woman's pregnancy, but his brother, Ramgutty Thakoor, there is every reason to conclude, took an active part in the administration of the drugs which caused expulsion of the fœtus (in the 4th or 5th month) and the subsequent death of the mother. The prisoner's confessions in the mofussil and before the magistrate differ, however, as to the party, who in the first instance asked her assistance to bring about a premature delivery. At the thannah she stated that Pitamber's brother, Ramgutty Thakoor, was the individual who begged her to aid him in avoiding exposure, and who gave her the drugs to administer, by which the abortion was ultimately effected. Before the magistrate she named another brother, Kishen Thakoor, and added that the deceased woman brought the drugs with her and swallowed them herself. Whatever the motive may have been which led to this discrepancy, the truth appears to be unquestionable, that the prisoner received the deceased woman, who was pregnant by Pitamber Thakoor, into her house, and whether induced to do so by Ramgutty Thakoor or Kishen Thakoor, (I doubt not it was the former) administered her *lall chitta* (a very acrid substance) some pills containing a portion of crude mercury in a state of minute subdivision and small pieces of a drug called *surbojolah*, which Dr. Davis observes "the natives are known to use for the

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purpose of procuring abortion, as well as to prevent impregnation."

According to the prisoner's confession, this medicine was administered on Thursday, and the fœtus expelled on the night of the same day. On Friday the deceased remained at the prisoner's house, and on Saturday she returned to her own home and died. The evidence for the prosecution, however, shows that this is either a mistake or a wilful misstatement on the part of the prisoner, for I gather from it that the deceased woman went to the prisoner's house and took the medicine on Wednesday, expulsion of the fœtus following on the same night, returned to her own home on Thursday and died on Friday, after her relatives had sent information to the prisoner of the dangerous state in which she was lying, and received instructions to give her some juice of the *kulmee*, a plant growing in ponds and tanks and of the leaves of the cotton plant.

Previous to death the deceased stated to those around her, that Ramgutty Thakoor had taken her to the prisoner's house and given the prisoner medicine, which the latter had administered. The consequences were, expulsion of the fœtus and her own dying state. This statement, it will be observed, tallies with the prisoner's mofussil confessions.

The case for the prosecution affords ample circumstantial evidence of the woman's pregnant state, of her brief absence from home, and of her return freed from her burthen, but in a dying state in consequence of medicines administered to bring about abortion. Death followed so speedily after the drugs had done their work, and so evidently as their consequence, that cause and effect are traced beyond a doubt.

An important part of the evidence for the prosecution is that of Chundromony, witness No. 15, the prisoner's grown up son, who deposed that the deceased was brought to his mother's house by Ramgutty Thakoor, who gave the prisoner both money to induce her, and drugs to enable her, to cause premature delivery and that the latter were administered or taken accordingly with the desired effect.

The native doctor, Wozuddeen, deposed that the appearance presented by the body indicated recent delivery brought on by the administration of deleterious drugs and ending in death.

I have already alluded to the prisoner's confessions in the mofussil and before the magistrate, and to the discrepancy noticeable therein. The evidence for the prosecution is strictly consistent with the mofussil confession, save as regards dates, and the conclusion from both is, that the prisoner administered some powerful drugs to the deceased, which were either left with her for that purpose by Ramgutty Thakoor, or procured and prepared by herself, the former being perhaps of the two the more probable inference.

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The defence was, that the deceased had taken the medicines herself, having been furnished with them by *Ramgutty Thakoor*, that two rupees were given to the prisoner to pay for the board and lodging afforded by her to the deceased.

This defence is opposed to the prisoner's mofussil confession, to the evidence for the prosecution generally and that of her own son especially, to the deceased woman's dying statements, to the prisoner's producing the remnants of the poisonous drugs, and to the universal character of such cases as the present.

The evidence for the defence (to character generally) established nothing at all to the purpose.

The Mahomedan law officer acquits the prisoner on the ground of discrepancy between the two confessions, and because he was of opinion from the general complexion of the case, that the deceased went to the prisoner's house and took the drugs herself.

I cannot concur in this verdict. Admitting that the discrepancies already noticed in this report, exist in the two confessions, I cannot find in them any sufficient reason for acquitting the prisoner. The truth of the mofussil confession is sustained by all the circumstances to which I have referred in recording my opinion of the defence, in which it will also be observed that she recurs to the tenor of that confession inasmuch as she again names Ramgutty Thakoor as furnishing the medicines, and not Kishen Thakoor whom she named to the magistrate. I have no doubt, in my own mind, that she administered the medicine, even if she did not also prepare it. The crime of causing abortion is very prevalent in this part of the country and forms the profession of certain elderly women, who alone are acquainted with the means of bringing it about.

In my opinion, the prisoner is convicted of the culpable homicide of the deceased by administering to her certain injurious medicines, with the view of causing abortion, and should be sentenced to five years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—Present: (Messrs. E. A. Samuells and D. J. Money.) The sessions judge has very fully and clearly stated the circumstances of this case.

The discrepancies pointed out by him in the confessions of the prisoner at the thannah and before the joint-magistrate are not material, and dc not affect the proof which their general consistency affords of her guilt.

Those confessions, together with the evidence of the witnesses on the trial, and the medical testimony of the native doctor, who examined the body of the deceased, prove beyond a doubt, that the prisoner administered to the deceased certain deleterious drugs to procure abortion, which caused her premature delivery and death.

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Case of SREEMOTI PUDDA *alias* PUDDEE or KALLIR MAH.

The sessions judge has remarked upon the prevalence of the crime of procuring abortion, and the notorious fact that a certain class of women are employed professionally for the purpose. By the English law the administering of any noxious substance to a woman for the purpose of procuring a miscarriage is made felony; and where the death of the woman ensues, the person administering the substance is guilty of murder.

The sentences hitherto passed by this Court in similar cases have, it is evident, been too lenient to suppress this unnatural crime; and as we believe it to be one of common occurrence, and but seldom brought to light, we consider that a severer example is necessary for its suppression, than that which the sessions judge recommends.

Concurring therefore with the sessions judge in convicting the prisoner of culpable homicide, we sentence her to fourteen years' imprisonment with labor suited to her sex.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND SOOKHOO AHIR

versus

LALL BEHARY DOOBEY (No. 5.) AND RAMSURRUN DOOBEY (No. 6.)

Sarun.

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Case of LALL BEHARY DOOBEY and another.

Appeal rejected.

CRIME CHARGED.—Wilful murder of Akiloo Ahir.

CRIME ESTABLISHED.—Both convicted of being accomplices in the culpable homicide of Akiloo Ahir.

Committing Officer.—Mr. J. F. Lynch, deputy magistrate, with full powers of a magistrate, at Sewan, Sarun.

Tried before Mr. H. Atherton, sessions judge of Sarun, on the 30th June, 1856.

Remarks by the sessions judge.—This case occurred on the evening of the 21st of March last, when the deceased Akiloo, with some of the people and children of the village Sohrai, went out to burn the *sumbhut* at the conclusion of the *hooly* festival. They appear to have gone within the boundary of the prisoners' village Surfora, when the prisoners with two other persons, absent, Gunesh and Ramsuhia, attacked the deceased with their *luttees.* I consider, from the evidence of witnesses Nos. 1, 2 and 3 in my court, that the absent party Gunesh must have dealt the blow which fractured the skull of the deceased, and caused instant death. Should he be seized and convicted, a reference to the Court will be necessary. Lall Behary hit him at the

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same time, the other two Ramsurrun and Ramsuhia striking him when down. The *lattees* used are not produced, but the evidence of the native doctor, witness No. 10 shows, that the blow on the head, must have caused almost instant death, and there were marks of other blows on the body of the deceased, confirming the evidence of the eye-witnesses, who state that four parties perpetrated the outrage. The cries of the people brought the plaintiff and chowkeedar instantly to the spot, and the body of the deceased was the same night taken to the thannah when the two prisoners and the two persons, not yet seized, were named as those by whom the deceased had been attacked, and the evidence of witnesses Nos. 11 to 17 shows, that these persons were generally reported to be the perpetrators. The prisoners deny the charge. Lall Behary says, he was ill at home on the night in question, and heard that some of the Sohrai people had come to carry off *his* grain, and been met by those of his village, when a fight took place between them in which Akiloo lost his life; but had this been the case he would not instantly have run away from home. We may be assured that in such case to save themselves, the Surfora people would have instantly given notice at the thannah. Ramsurrun pleads an *alibi*. He says, he went the day before the occurrence, to borrow a bullock of his nephew, some thirteen *coss* from his village, and stayed with him till Sunday when he left without the bullock, and heard, when returning home, that a man had been killed in the way explained by Lall Behary. I disbelieve the story of both the prisoners, and convicting them with the law officer of being accomplices in the culpable homicide of the deceased, sentence them each to seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) We see no reason to interfere with the sentence passed by the sessions judge. We should have considered it lenient for so gross and outrageous an assault, ending in death, but that it appears from the evidence that the deceased was a trespasser in the village, where the prisoners resided; and it is probable, though this is not proved, that there was provocation on his part. The act too appears to have been sudden and unpremeditated.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT AND RAMNATH KULIA

versus

GOOROODOYAL SINGH ROY (No. 1,) RAMGOPAL SINGH ROY (No. 2,) RAMCOOMAR ROY SENIOR (No. 3,) RAMDHAO ROY (No. 4,) SREERAM ROY (No. 5,) RONORAM ROY (No. 6,) PUREEKHEET DEY (No. 7,) RAMJEE DEY (No. 8,) RAMCHURN ROY (No. 9,) RAMDHUN CHUNG CHOWKEEDAR (No. 10,) AND JOYHURRY BAGDEE CHOWKEEDAR (No. 11,) OF CASE No. 2, AND RAMCOOMAR ROY JUNIOR (No. 1,) OF CASE No. 1

Hooghly.

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Case of GOOROODOYAL ROY and others.

Appeal rejected.

CRIME CHARGED.—1st count, prisoners Nos. 1 and 2, and No. 1, of case No. 1, of culpable homicide of Ramgopal Kolia, and 2nd count, prisoners Nos. 1 to 11, and No. 1, of case No. 1, being accomplices in the above crime.

CRIME ESTABLISHED.—Prisoners Nos. 1 and 2, of case No. 2, convicted of the culpable homicide of the deceased Ramgopal Kolia and the rest of being principals in the second degree or accomplices in the above crime.

Committing Officer.—Moulvee Abdool Luteef, deputy magistrate of Jehanabad, with full powers of a magistrate.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 25th June, 1856.

Remarks by the additional sessions judge.—Prosecutor's father, the deceased Ramgopal, held, as a *mouroosi ryot*, certain lands in Puttee Boira, mouza Saturria. These he claimed to continue to hold at a fixed rent though without a *pottah*—a claim, which, if the landlord had chosen to serve a notice of enhancement,* and the tenancy was not recorded at a fixed rate in the permanent settlement, would be untenable. Dassmoni Bibi five years back obtained the proprietory right in *talook*, and has for some time back through her agents the prisoners,† and others not in custody, been demanding rent at an increased rate from the deceased. This the deceased has steadily refused to pay. In revenge for this refusal (it is affirmed) an application was made at the thannah for the assistance of a piada in a distress

* Sections 9 and 10. Regulation V. 1812.

† The first prisoner is her brother-in-law and agent, the second her gomashtah, and the third her *tehseeldar*.

proposed to be levied on the goods of two persons connected with prosecutor by a *tehseeldar* of Dassmoni Bibi's, the prisoner No. 3, Ramcoomar Roy Senior. The two persons, whose goods were to be distrained were Purtaub Kolia, witness No. 22, and Ramnath Kolia, the prosecutor and son of deceased. The balance of rent amounting to Rs. 113 was all due, it was said, by Purtaub only as a defaulter; but it was added the prosecutor was his *surburakar* or manager, and a distraint would be made on *his* goods too for what was thus a joint liability. The assistance applied for was granted by the darogah under Section 27, Regulation XX. of 1817; and a Muzkooree Piada deputed to attend the distrainers in the distraint. It is not pretended the deceased had any balance to be distrained for; or that there was any *personal* claim against deceased's son, the prosecutor Ramnath, who lived with his father. Nor is it pretended the defaulter Purtaub, though related to, was a member of that family. The Muzkooree Piada was kept inactive some few days by the party engaging him; and then seeing preparations made for a levy by force which might commit acts of violence, refused to act and retired. This was on the morning of the day on which deceased was killed. On that day the 15th February last, the prisoners Gooroodoyal, Ramgopal and Ramcoomar (Nos. 1, 2 and 3,) having assembled a large body of men, certainly exceeding one hundred in number, proceeded without a police officer to the deceased's house and enclosure, and from Purtaub's cow-house, which was close by, seized four bullocks, and probably from elsewhere some grain. It is, I think, very doubtful that the deceased's house was entered and plundered as stated for the prosecution. The distraining party then proceeded to the deceased's bullock shed, and were endeavouring to seize some bullocks therefrom as partly the property of the prosecutor (*the defaulter's surburakar,)* when the deceased and a large number of friends and relatives, who, beyond a doubt, were well aware before hand of what was about to be done, and who had also beyond a doubt collected together to oppose the distraint, resisted the seizure of the cattle, a fight ensued, clubs and sticks were wielded by the assailants, and brick bats hurled by both sides, and the result was, the deceased received two severe blows on the head which caused his death, while on a litter on his way to the thannah, the same day; and three more, one on the side of the prisoners, and two on that of the prosecutor, were slightly bruised. The assailing party seeing what had been done, it would appear, at once dispersed and left the place, but the police heard of the affair immediately, and all concerned on the part of the distrainers, who had not absconded, were peaceably and easily arrested.

The evidence of the three first witnesses to the fact is evidently partial, and much exaggerated. They are all nearly

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related to deceased (as are witnesses Nos. 7 and 8, not examined,) and their statements are in some points contradictory and incredible, but the testimony of the eye-witnesses Nos. 4, 5 and 6, (especially of the last two) is fairly and consistently given, and taken in combination with the rest of the evidence for the prosecution, the record, and the probabilities of the case, warrants the assumption of the facts as above detailed. The ready presence of so large a number of persons on the side of the prosecutor, the seizure and delivery to the police of some of the assailants afterwards by the prosecutor and some of his friends;* and the injury inflicted on the person of one of the assailants, (the prisoner Gooroodoyal,) fully prove to me that a mutual affray occurred in which it was impossible for so many to say truly of their own knowledge, as is pretended, by whom the fatal blow received by the deceased, and the lesser blows received by deceased's brother and nephew, witnesses Nos. 7 and 8, were struck.

* Witness No. 12.

The defence which under the provisions of Act XXXVIII. of 1850, has been made for the prisoners by their Counsel* is, in the abstract to the following effect.

"We distrained Purtaub's four bullocks, Purtaub's and the deceased's bullock-sheds being contiguous; and our distraint was against Purtaub and the prosecutor for a joint default, the prosecutor and his father the deceased being members of one undivided Hindoo family. After taking Purtaub's four bullocks, we were about to seize prosecutor's, when the resistance was made. We took a large body of men with us to distrain, as by that means we intended to overawe resistance. We had anticipated resistance (when we applied previously to the thannah for protection) only to a small party. We retired immediately the resistance was offered, but unfortunately not before a person had been injured. The deceased receiving a death-blow in the *melee*, it is not *we* who were forcibly executing a legal process who would be responsible, but the opposite party, whose resistance was unlawful, for resistance would be unlawful to a legal distraint, illegally or irregularly executed if the resisters believed themselves the distraint was legal and legally conducted.

"Resisters' illegally resisting, as far as their own reason is concerned and causing the death of one of their party, would exculpate the illegal process-server. There was an animus on the part of the prosecutor and his people, who assuredly knew the distraint was to be made, and who must have made preparations

* W. Money, Esq., barrister. A. Carapiet Esq., Attorney-at-law, and another.

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to meet it. The prosecutor and his people evidently rushed out in a body to meet us on our arrival, and our running away the instant we saw that mischief had accrued, proves we did not anticipate doing what was done that day. We are prepared on scientific grounds to demur to the cause of death being such as assigned by the native doctor who has been examined. He says the cause of death was two-fold, the gorging of the blood-vessels of the brain, and a rupture of a blood-vessel in the brain. We maintain that the gorging would not cause death; and that the said rupture could not result from an external blow leaving the bone of the skull uninjured. The evidence of the witnesses to the fact, as to each having himself seen every blow struck in the *melee* and by whom, is incredible."

"Again, with respect to the prisoners charged with aiding and abetting, we beg to urge that although forming part of a large body of men assembled by their landlord, they could not *therefore* know an unlawful distraint was about to be levied, and were consequently free of blame for a homicide committed say by one of their party and not by themselves. They could not anticipate a sudden assault of the kind. And it will be observed it could not possibly be distinctly shown by whom, in the *melee*, deceased was struck. The subordinates saw probably the customary mode of levying a distraint only, though the distrainers were in such numbers. Moreover the said accomplices, if even guilty of aiding a riotous and otherwise illegal levy, could only be answerable for such offence and not for a homicide. The distrainers had, we are instructed, distrained before in this village for enhanced rents."

Judgment.—The anticipation of a resistance, as evidenced by a previous application for police assistance, is herein not denied. It is not denied that the distress was levied by the distrainers unaccompanied by a police officer, and backed and accompanied by a large force. It is not affirmed that any previous notice and account was served on the so-called defaulter, such as the law* requires to be made before there can be a legal distraint. And it is not pretended the deceased died from natural causes or from a cause unconnected with the charge under consideration. It is also not stated under what law, a distraint, even after all the legal preliminaries have been complied with, could be made, even without force, on the property of prosecutor (and constructively on that of the deceased living with him in joint-ownership) as "*surburakar*" only to the defaulter.

* V. 1812, Sec. 13.

Assuming the prisoners are landlords vested by law with power to distrain; that the prosecutor and his party are their tenants, and had their remedy under Act X. of 1846, if not connected with the alleged defaulter; and that on the day in question the former ostensibly acted as distrainers, it is incum-

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bent on this court to decide, first, whether the distraint was conducted in a lawful or unlawful manner; and secondly, if the latter, how far the distraining party are answerable for the consequences that ensued.

The distraint was carried out forcibly by a large body of men and without a preliminary attention to the requirements of the law. The distrainers by their previous application to the darogah (which has not been repudiated by them) admitted they anticipated resistance, and yet eventually, three days later, carried out their object without the protection and aid of a police officer, and through the medium of a large body of retainers, armed or unarmed, matters nothing. By law (XX. 1817, Section 27, Clause 2,) it was their duty on being opposed in their distraint, to have withheld the execution of the process; to have retired; and to have claimed the aid and protection of the police before venturing to proceed further. It was too late to do so when they had met with resistance, and repelled that resistance with force and bloodshed; and it is no answer to the first point just mooted to say that so large a force was employed as to dispel all anticipation of resistance by the means taken to overawe it. The presence of a police officer is essential where force is even legally employed by a person not a police officer in the exercise of a power conferred on him by law; and no such power or authority can be legally exercised with the strong hand and by the aid of a multitude, but only in a peaceable manner. That the distraint was otherwise illegally conducted and not under the provisions of Regulation VII. of 1799 and V. of 1812 (especially Section 13 of the last enactment) has been already stated, and has not been attempted to be controverted.

The legal power of distraint having been thus illegally exercised, any death which may have occurred in the *melee* caused by the forcible and illegal manner in which the distraint was conducted by the distrainers, renders the latter liable to a conviction for culpable homicide at the least; and the counsel for the defence have no authority to show for the doctrine advanced by them that such a wrong must be overlooked and excused, when the opposite party act in their own opinion illegally by opposing what was in their own minds (though not in reality,) a right rightfully (because perhaps continually so) enforced. Two wrongs will not make a right, and had the deceased been killed while resisting a legal distraint, legally conducted, the distrainers would, in my opinion, from the improbability of their being able to show there was any apparent or reasonable necessity in such a case for taking life have been also, though in a less degree, guilty of culpable homicide. The evidence of the native medical officer as to the cause of the deceased's death is to be gathered from prisoner's defence. That evidence is supported by the

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excellent authority quoted in the margin* wherein it is asserted that—"A blow on the head may destroy life by causing an extravasation of blood on the surface or *in the substance of the brain*. Extravasation may occur from violence *with* or *without fracture*, and it may take place (even) without there being any marks of injury to the head." Had the medical testimony been worthless, it was still in evidence the deceased, a hale man of sixty, had been beaten severely on the head and died in consequence the same day.

* Taylor's Medical Jurisprudence, page 378.

It is lastly urged for the defence that assuming that prisoners Nos. 1 and 2 (and prisoner No. 3 too, should I think have been committed on the first count) did know or were bound to know their act was an unlawful one, yet the mob of subordinates who accompanied them (of whom were prisoners Nos. 3 to 11 of the first, and prisoner No. 1 of the second calendar) would not be guilty of being accomplices in the culpable homicide, whatever they might have been, had the charge been for a riot, or riotous distraint, or affray. But the plea is a bad one. There can be no doubt but that every man in the mob which marched with the distrainers to the prosecutor's and his father's premises knew that so to assemble and act was illegal, and that in *all* anticipated cases of resistance to distraints, the presence of a police officer was both usual and indispensable. And most assuredly, "if several persons combine for a legal purpose to be carried into effect by illegal means and in an unlawful manner, especially if it be to be carried into effect notwithstanding any opposition that may be offered against it, and one of them in the prosecution of it, kill a man, it is, when not murder, at least manslaughter (or culpable homicide) in all who are present, whether they actually aid and abet or not, provided the death be caused by the act of some one† of the party in the course of his endeavours to effect the common object of the assembly."

† Archbold Criminal Pleading, page 5, edition 1853.

In concurrence with the law officer, I convict prisoners Nos. 1 and 2, Gooroodoyal Singh Roy and Ramgopal Singh Roy, of the culpable homicide of the deceased Ram Gopal Kolia, and sentence them each to five (5) years' imprisonment with labor, the labor commutable to a fine of three hundred rupees payable on or before the 1st June, 1856, and we jointly convict the rest of the prisoners, 10 in number as per margin,‡ of being principals in the second degree or accomplices in the above crime, and they each and severally will be imprisoned for two (2) years with labor commutable to a fine in each case,

‡ Ramcoomar Roy, Senior.
Ramdhao Roy.
Sreeram Roy.
Ronoram Roy.
Pureekheet Dey.
Ramjee Dey.
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Ramdhun Chung.	of fifty rupees, payable on or
Joyhurry Bagdee.	before the same date, the 1st
Ramcoomar Roy, Junior.	June next.

Sentence altered with respect to prisoners Nos. 1 and 2 by permission of Sudder Court as follows :—Prisoners Nos. 1 and 2 to be imprisoned for five (5) years each *without labor.*

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money). The prisoner's pleader having admitted that he had no defence to urge, and the case being clearly proved by the evidence, we see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT

versus

MAHOMED MUNSOOR.

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Case of MAHOMED MUNSOOR.

In concurrence with sessions judge a conviction of perjury held, and prisoner punished. Incorrectness of the law officer's *futwa* in the lower court noticed.

CRIME CHARGED.—Perjury in having on the 24th July, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath under Act V. of 1840, in a case of *dabeedaree* No. 13, instituted by Mahomed Adil, claimant, before the moonsiff of Parcool that "the claimant has no right of possession to the talooks attached, they belong to Mahomed Satir debtor, he is resident on and possessor of them," and in having on the 26th July, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath under the same Act in another case of *dabeedaree* No. 12, instituted by Abdool Mujeed, before the said moonsiff, that they are not the property of the above debtor, but belong to the claimant who possess them as purchased by him; such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 22nd August, 1856.

Remarks by the officiating sessions judge.—In a decreejaree case, (Brojocoomar Dass, decreeholder, *versus* Satir Ally debtor, and Mahomed Adil claimant,) which was pending before the moonsiff of Parcool, the prisoner, who was cited as witness on the part of the decreeholder, on the 24th July, deposed under a solemn declaration taken instead of an oath, before the moonsiff of Parcool, that "the claimant had no right of possession to the

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talooks attached; they belong to Mahomed Satir debtor, he is resident and possessor of them."

The prisoner subsequently, in the same case, in which Abdool Mujeed was claimant, on the 26th July, deposed under a solemn declaration taken instead of an oath before the moonsiff that "they are not the property of the above debtor, but belong to the claimant, who possesses them as purchased by him."

The prisoner, in his reply taken before the moonsiff on the 26th July, indirectly admitted, that his depositions of both dates were contradictory to each other.

Before this court, the prisoner denies his guilt, and pleads that he did not make any such statement on the 26th July; this plea is useless, because the fact that the prisoner gave contradictory evidence was clear from the depositions of the prisoner, which and the prisoner's reply before the moonsiff of the 26th July, were satisfactorily attested before this court, by the evidence of the writers thereof, and of the pleaders who were the subscribing witnesses thereto. Moreover, the prisoner, in his own deposition admits that the said Abdool Mujeed was his *peer* (spiritual guide,) and there is no doubt that the prisoner for the benefit of his *peer* (the claimant) had wilfully and deliberately deposed on the 26th July, to the fact which was contrary to his former statements of the 24th idem. Such statements being made contradictory to, and on a point material to the issue of the case, I consider the prisoner guilty of wilful perjury.

The law officer acquits the prisoner of the crime charged, and states that the crime of perjury according to *shurra* is not valid, unless the prisoner admits his previous deposition on oath. I differ from the law officer's verdict, for the fact that the prisoner wilfully and deliberately gave conflicting depositions on the abovementioned dates is satisfactorily proved, and it is not a ground for acquittal whether the prisoner admitted his previous deposition or not, I would therefore sentence the prisoner to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The opinion expressed by the law officer in this case is at variance with the exposition of the Mahomedan law of perjury, which is given in Construction No. 656, and the judge will be good enough to direct the law officer's attention to the *futwa* of the Cazee ool Coozat therein embodied. The Mahomedan law, however, is not that by which our Courts are now guided in trials for perjury; and the point raised by the law officer was settled by the Court's circular of the 18th June, 1841, which stated the Court's opinion "that the mere fact of a witness having wilfully given two statements, directly at variance with each other, on a point material to the issue of the case on which he gives his testimony must be held

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to be perjury." The crime, in the case before us, is clearly brought home to the prisoner and we sentence him, as recommended by the sessions judge, to three years' imprisonment with labor in irons.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. LUCKHEE BEWAH
versus
SHEIKH GOOEEAH.

Mymensing.

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Case of SHEIKH GOOEEAH.

Prisoner convicted of aggravated culpable homicide and under the circumstances of the case, which show that deceased had abused prisoner for his conduct in carrying off the wife of another man, and that death of the deceased might have been prevented had he without delay been subjected to proper medical treatment, sentenced to fourteen years' imprisonment with labor and irons.

CRIME CHARGED.—Wilful murder of Godah Sheikh.

Committing Officer.—Mr. W. Cockburn, deputy magistrate of Jamalpore, Mymensing.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 23rd June, 1856.

Remarks by the sessions judge.—The circumstances of the case as elicited from the evidence recorded on the trial, and deputy magistrate's record of commitment are these.

One Musst. Futtick and her husband Anundee lived with the deceased in the same premises. On a Thursday in the month of Bysack last, when the deceased and his wife the prosecutrix Luckhee Bewah and Anundee Sheikh were absent from home, the prisoner forcibly carried away Musst. Futtick and detained her in his house; that Anundee Sheikh and witness No. 7, Muddo being informed of the matter when returning from the *haut* reported it to the police when the darogah deputed Monglah Chowkeedar (witness No. 10,) to enquire into the correctness of the charge, and that accordingly they went to the prisoner's house and rescued Musst. Futtick. On coming out of the house into the road, the deceased, who also went to the prisoner's house, reprimanded him for his improper conduct when the prisoner inflicted a severe blow on him with a sword which nearly severed the left arm below the elbow joint. The deceased died on the 13th May, at the jail hospital from the effects of the injury.

The civil assistant surgeon deposed that the deceased's death was caused by exhaustion from the excessive loss of blood prior to his admission into the Hospital; that the deceased received an incised wound on the left arm just below the elbow joint, which cut right through the outer or the radical bone and divided two or three arteries connected with the joint; that death in all probability could have been arrested, if the deceased had been subjected to proper medical treatment and the hemorrhage had

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had been stopped at the time; that the deceased was some days in the Hospital, but no attempt to amputate the arm could then be made, because he lost so much blood that he gradually sunk under it, and that amputation would not have been necessary, in the first instance, if medical aid had been immediately rendered.

Before the police, the prisoner stated, that for a long time there existed a criminal intercourse between him and Musst. Futtick; that the villagers having, in consequence, endeavoured to excommunicate them from their society, he took Musst. Futtick to his house with her consent, but that he made her over to the police chowkeedar when her husband and others went to rescue her; that on the same day at about four *dunds* after night fall, the deceased and Anundee and others attacked his house armed with *lattees* and plundered his property; that he hid himself underneath a platform made of bamboos &c., but when the deceased and others were about to get a light with a view to arrest him, he, in self-defence, armed himself with a sword and shield and on flourishing the same with a view to make his escape he unwillingly hit the left arm of the deceased and wounded him. Before the deputy magistrate he also adhered to the same defence, but in this court he denied having carried away Futtick or wounded the deceased or having even seen him; that the deceased and others attacked his house and plundered his property and being informed that he was about to complain against them, they have brought this charge against him to evade the consequences, but he examined no witnesses to prove his assertions stating that they had colluded with the prosecutrix.

The depositions of the deceased were taken before his death both by the police and the magistrate, in which he stated that he went to rescue Musst. Futtick, who, he was informed, was carried away by the prisoner, and that the prisoner came out of his house with a sword and dealt a severe blow with it on his left arm. Before the police he added, that he used abusive language towards the prisoner for his illegal conduct.

The jury who aided me in the trial found the prisoner guilty of wounding the deceased, which caused his death.

The prisoner's mother witness No. 1, is the only eye-witness in the case. She deposes that the deceased was attempting to force open the door of the house in which the prisoner shut himself up, when he came out of the house and inflicted a blow with a sword on the deceased. The evidence of witnesses Nos. 7, 8, 9 and 10 goes also to show that after they had come out of the prisoner's house, the deceased cried out that he had been wounded by the prisoner and witness No. 10 also added that the prisoner inflicted a blow upon his shoulder with a *lattee* and also attempted to strike him with a sword on remonstrating

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with him for forcibly taking away another man's wife. The prisoner's mother (No. 1,) corroborated the above story.

There appears to be no valid reason for the prisoner having carried away Musst. Futtick from her house, for the witnesses examined in the case give her an unimpeachable character, and no previous enmity is said to have existed between them. The prisoner states that he had an illicit intercourse with her and that she went to his house willingly, but she distinctly denies having had any intimacy whatever with the prisoner, and adds, that the prisoner dragged her to his house by the hair and that he put a sword across her throat to get her consent to marry him. Be that as it may, the conduct of the prisoner was most wanton, first in having forcibly carried away the wife of another, and afterwards having wounded the deceased, who had come to her rescue, with a sword which caused his death.

The prisoner pleaded before the deputy magistrate, that he used the sword in self-defence, and in this court he denies having wounded the deceased, or having seen him at the time, but the proof against him is quite conclusive, his mother, witness No. 1, clearly deposes to having witnessed the prisoner come out of the house and strike the blow upon the deceased, and the circumstantial evidence also proves that the deceased cried out immediately on receiving the blow that he had been wounded by the prisoner. Looking therefore at the instrument used, and the severity of the blow dealt, and the circumstances which led to the commission of this atrocious outrage, I consider that the prisoner merits a more severe punishment than I am able to inflict, and convicting him of aggravated culpable homicide, would recommend him to be sentenced to (14) fourteen years, imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The evidence of the prisoner's mother, witness No. 1, is clear to the fact of the prisoner having inflicted the sword-wound on the deceased from the effect of which he died; her evidence is corroborated by the depositions of witnesses Nos. 7, 8, 9 and 10, which show that immediately after the infliction of the wound they saw the prisoner with his arm almost cut through and heard him cry out that he had been wounded by the prisoner.

The deceased, in the deposition made by him before the police and the magistrate, before his death, states that he went to the house of the prisoner to rescue Musst. Futtick, the wife of Anundee Sheikh, when the prisoner, whom he acknowledges that he had abused for his improper conduct, rushed out on him and inflicted on him the severe wound on his left arm. The civil surgeon deposes that the deceased's death was caused by exhaustion brought on from loss of blood previously to his being received into hospital, and adds, that death, in all proba-

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Case of SHEIKH GOOPEEAH.

bility, might have been arrested had the deceased been without delay, subjected to proper medical treatment. The prisoner, before the sessions judge, denies the charge in toto; though, before the deputy magistrate, he had acknowledged that he had wounded the deceased, but justified it on the plea of self-defence. We convict the prisoner, Sheikh Gooceah of the aggravated culpable homicide of Godah Sheikh and sentence him, under the particular circumstances of the case to fourteen years' imprisonment with labor and irons.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

KISTO PAL.

Dacca.

1856. September 15.

Case of KISTO PAL.

The prisoner convicted of being a thug, was sentenced to imprisonment in the zillah jail for life. Transportation was not imposed as part of the sentence on account of his age.

CRIME CHARGED.—1st count, having (in company with other thugs) murdered Kalachand Kurmokar at Sulleempore Ghat, thannah Balgachia, zillah Furreedpore, and having plundered Rs. 8, from the murdered man; 2nd count, having participated in the plundered property; 3rd count, being by profession a thug and having belonged to the gang of Kasseenath Sircar, Ramlochun Sein and other thug sirdars and approvers.

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and joint-magistrate of Dacca.

Tried before Mr. R. J. Scott, officiating sessions judge of Dacca, on the 17th March, 1856.

Remarks by the officiating sessions judge.—The evidence of the approvers* regarding the prisoner agrees with their confessions recorded in 1842, it is further strengthened by the deposition of witness No. 9,† brother of the man murdered at Sulleempore.

* No. 1, Kasseenath Sircar.
2, Ramlochun Sein.
3, Kissore Sein.
5, Ruggoo Biswas.
6, Kasseenath Sircar.
7, Netyo C[illegible]ng.

† No. 9, Joychund Kurmokar.

The prisoner urges in his defence, that he was detained in jail under trial for thuggee, at the same time with the approvers; that he was acquitted by the orders of the Nizamut, but the approvers were found guilty, and that during the period of detention together, they had an opportunity of becoming acquainted with him sufficiently to enable them to denounce him. He does not specify any particular cause for enmity, but attributes the charges brought

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against him to a sort of professional desire to cause the apprehension and punishment of any person or persons however innocent. The defence is plausible and would be very strong if the charges against the prisoner were for the first time brought forward, but they are recorded in the confessions given by the witnesses as far back as 1841-42.

I consider the evidence of the approvers trustworthy, and concur with the law officer in finding the prisoner guilty on the first count of the indictment. On a previous occasion he was acquitted of being a "professional thug" as proved by the confessions of thugs in two separate cases. I think that is no bar to his now being found guilty of being a professional thug on proof of his participation in other acts of thuggee, with which he had not been previously charged. I therefore find the prisoner guilty of the third count on the indictment.

Under the circumstances of the case, I recommend that the prisoner be sentenced to imprisonment in transportation beyond sea for life.

On perusal of the above report, the following resolution was recorded by the Nizamut Adawlut (present: Messrs. B. J. Colvin and J. H. Patton,) No. 483, dated the 2nd June, 1856.

The Court observe that in the grounds of commitment recorded by the committing officer, the prisoner is said to have been acquitted (see letter No. 1340, of the Nizamut Adawlut, dated 24th April, 1840). On reference to the letter No. 230, dated the 14th April, 1840, from the sessions judge for the trial of thugs, and its enclosure, dated 4th October, 1839, from the assistant general superintendent, to which the above letter (No. 1340) is in reply, the Court find that the prisoner's name is not included in the list appended to the enclosure; but the Court presume that he was acquitted in accordance with the instructions issued with regard to the prisoners named in the list. Under these circumstances, it is necessary to see on what charge he was formerly tried and acquitted. The officiating sessions judge also refers to a previous acquittal of the prisoner on the charge of being a professional thug, without specifying the date or giving any clue to the case, which it was obviously his duty to have done. The Court therefore remand the case for the necessary omissions to be supplied. The officiating sessions judge will, in re-transmitting the case, forward the original paper, containing the charges, together with the warrants of acquittal, and will detail more particularly the circumstances of the prisoner's previous apprehension and trial, that the Court may be in a better position to judge whether the prisoner's previous acquittal is any bar to the present proceedings.

With reference to the above, the following letter was submitted by the sessions judge of Dacca, No. 325, dated the 9th July, 1856.

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KISTO PAL.

I beg to acknowledge receipt of a resolution of the Court of Nizamut Adawlut, No. 483, dated the 2nd ultimo, calling on me for a more detailed account of the circumstances connected with the apprehension and trial of the prisoner, Kisto Pal, and also for the transmission of the original paper containing the charges on which he was formerly tried, together with the warrant of his acquittal on that occasion.

I beg permission to assure the Court that at the time of writing the report, No. 168, dated the 20th of March last, I was under the firm persuasion that all the documents, on which it was based, had been forwarded with the record of the trial held before me.

The prisoner was originally committed on the 30th of July, 1839, to stand trial, charged with being a professional thug. The commitment was cancelled by the judge, and the prisoner released on surety on the 20th of November, 1839. The Court of Nizamut Adawlut quashed the proceedings of the judge in their letter No. 1340 of the 24th of April, 1840, and the trial on the original charge ended in the acquittal, dated the 30th of April, 1841.

The acquittal referred to, in the 4th paragraph of my letter, is the one pleaded by the prisoner, the warrant for which is now transmitted with the other papers of that case.

It did not appear to me that an acquittal of a prisoner on the charge of being a professional thug, which charge was based on evidence to his having been concerned in specific acts of thuggee, could bar a subsequent trial and conviction on the same general charge, based on other acts of thuggee; I therefore found the prisoner guilty on the third as well as on the first count.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to discredit the evidence of the witnesses. The prisoner has long been a suspected character, and has been denounced as a professional thug for a series of years. We therefore concur with the sessions judge in convicting him on the third count; but, in consideration of his age, said to be seventy years, we sentence him to imprisonment for life in the zillah jail.

With reference to Act XXX. 1836, the sessions judge ought not to have required a *futwa*.

We also draw the attention of the committing officer and sessions judge to para. 6, of Circular Order, No. 54, dated 16th July, 1830, with reference to entering on the record of trial and proving papers referred to in proof, which has been overlooked in the present instance.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, Esqs.,
Officiating Judges.

Nuddea.

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Case of JAMEER SHEIKH and another.

Appeal rejected.

GOVERNMENT AND TOKEE SHEIKH HALSHANA
versus
JAMEER SHEIKH (No. 4,) AND NOMEERA BEBEE (No. 5.)

CRIME CHARGED.—No. 4, wounding the prosecutor with a sword with intent to murder; No. 5, 1st count, aiding and abetting in the above wounding with a sword with intent to murder; 2nd count, being accessary before the fact to the above wounding with a sword with intent to murder.

CRIME ESTABLISHED.—No. 4, wounding the prosecutor with a sword with intent to murder him and No. 5, aiding and abetting in the wounding with a sword with intent to murder.

Committing Officer.—Mr. G. Hewett, deputy magistrate of Cutwa.

Tried before Mr. R. M. Skinner, officiating sessions judge of Nuddea, on the 3rd June, 1856.

Remarks by the officiating sessions judge.—From the evidence it is clear that the prosecutor, in consequence of a message sent through Sumee Bewa by prisoner No. 5, wife of prisoner No. 4, went* to the house of the prisoners. Shortly afterwards, at 7 P. M., the neighbours†, hearing the cries of Sumee, who had been alarmed by the calls of prosecutor, ran to the spot, and saw the wife, (prisoner No. 5,) holding the chain outside the house, and heard prosecutor exclaiming that he had been cut and thrown down. These persons caused Nomeera (prisoner No. 5,) to open the door. Prosecutor came out bleeding with four wounds on the back of his head, on his back and on his arm. Jameer, (prisoner No. 4,) had hold of his waist and held a sword and spear. The sword still retains the appearance of having been bent and blood-stained from the blows.

* Witness No. 6, Sumee Bewa.
" " 7, Tofel Sheikh.
" " 8, Khoosee Mullick.
" " 11, Matbur Sheikh.

† Witness No. 7, Tofel Sheikh.
" " 8, Khoosee Mullick.
" " 9, Melon Sheikh.
" " 10, Manick Sheikh.
" " 11, Matbur Sheikh.
" " 12, Golam Sheikh.

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The wounds were subsequently seen by other persons,* as well as by the native doctor of Cutwa, witness No. 5, who deposes that they endangered life and that the wounded man was one-half month in hospital under medical treatment.

* Witness No. 2, Dusorut Chowkeedar.
" " 3, Ramchurn Halshanna.
" " 13, Jhaboo Mundle.
" " 14, Loknauth Doss.
" " 15, Shookchund Doss.
" " 16, Huradun Biswas.
" " 17, Greedhur Puramanick.

The prisoner, Jameer, has not denied that he inflicted the wounds, but he avers that prosecutor went to steal. The witnesses for the defence do not support him. One of his witnesses (Sadoo No. 22,) testifies that this prisoner and prosecutor were employed by the same master. This corroborates prosecutor's statement and the suspicion that the deed was perpetrated from enmity owing to the prosecutor having caused the dismissal of the prisoner from employ.

Nomeera does not deny that she kept the door fast from the outside, but professes that she did so because one thief had escaped and she wished to secure the other, whom she saw inside; and that her cries attracted the witnesses Nos. 7 to 10. Their evidence above alluded to disproves this defence. She has no witnesses to summon to substantiate her statement.

The jury give a verdict of guilty of "wounding with a sword with intent to murder" against Jameer (prisoner No. 4,) and of "aiding and abetting in the above" against Nomeera (prisoner No. 5.)

I concur in this, and sentence Jameer Sheikh to imprisonment with labor in irons for fourteen years; I also sentence Nomeera Bebee to seven years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoners are convicted upon the clearest evidence. We see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
BUDDUN CHUNDER KOAR.

East Burdwan.

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Case of BUDDUN CHUNDER KOAR.

Conviction of perjury upheld in appeal.

CRIME CHARGED —Perjury in having on the 25th April, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the darogah of thannah Gangooreah, that his niece, Matongenee, cohabited with one Chinnibas Koar, that the aforesaid Chinnibas, during his (prisoner's) absence from home, inveigled her away from his house, taking with him several articles of property and concealed her; that he afterwards heard that the aforesaid Chinnibas having killed his niece, had thrown her into a pond, that on searching he found her body there, and accused the aforesaid Chinnibas of having murdered her, and in having again on the 14th May, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the officiating magistrate of Burdwan, that he never made any statement of the above nature, that his niece, Matongenee quarrelled with him and left his house and went to his nephew, Ramlal Sha's house, in Harro village, taking with her several articles, that he went to his relations and on returning home eight or nine days afterwards, he heard from the villagers that Matongenee had died of cholera in the aforesaid Ramlal Sha's house and that he (Ramlal) in consequence of having no wood to burn the body had thrown it into the water, that he went to the thannah to get back the things taken away by Matongenee which the darogah gave to him, and that the aforesaid Chinnibas did not cohabit with Matongenee, and that when the darogah, went to his village to enquire into the case he told him she had died of cholera; such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. W. Lawford, officiating magistrate of East Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East Burdwan, on the 27th June, 1856

Remarks by the officiating sessions judge.—The prisoner went to the darogah and accused Chinnibas of the murder of his niece and afterwards, before the magistrate, he withdrew the accusation and declared that his niece had died from natural causes.

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Both depositions were given with circumstantial details, as set forth in the charge.

The prisoner denies the charge and avers that the darogah wrote a false deposition.

The law officer convicts the prisoner and declares him liable to *tazeer*.

The prisoner's defence is obviously false, and as he is guilty of gross and deliberate perjury, I sentence him to five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The charge of perjury is clearly established against the prisoner, and we concur in the conviction and sentence passed by the sessions judge.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT AND SOBEERUN MUSSULMANEE

versus

GOPAUL SHEIKH.

Hooghly. 1856 September 16. Case of GOPAUL SHEIKH.

The evidence being weak and untrustworthy, prisoner acquitted of charge of murder.

CRIME CHARGED.—1st count, wilful murder of Matoo Mussulmanee, mother of the prosecutrix, Sobeerun Mussulmanee, on the 18th February, 1856, corresponding with 7th Falgoon, 1262, B. S.: 2nd count, culpable homicide of the said Matoo Mussulmanee.

Committing Officer.—Mr. F. R. Cockerell, officiating magistrate of Hooghly.

Tried before G. D. Wilkins, additional sessions judge of Hooghly, on the 21st July, 1856.

Remarks by the additional sessions judge.—This charge of wilful murder has been preferred by a wife against her husband, the deceased being mother to the former, and the murder having been committed, it is alleged, in connection with disagreements between the husband and wife, who at the time were not cohabiting.

The sole witness to the fact is a child of ten or eleven years of age, Raja Bagdy chokra, No. 1, who being of immature age and, in my opinion, unfit to give evidence on oath or solemn affirmation, has been examined in the manner prescribed by Act II. 1855, Section 15. He tells a literally consistent and certainly a probable story, and appears to have seen the prisoner commit the act with which he has been charged. After seeing it, he instantly informed the chowkeedar of the nearest village (witness No. 7,) of the event. The rest of the evidence in the

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case is all circumstantial, but alone, it would seem to me to be sufficient for conviction, even if the child's testimony be set aside, for which I see no good reason.

Early last year, the prosecutrix ran away from her husband, who lives at Ramnugger, to her mother's house at Henopara, five or six miles distant. She says he beat and starved her. There was then an appeal by the husband to the neighbours at Henopara, who in a *punchayet* restored the wife to her husband last Jeyt, the mother-in-law throughout siding with the wife in her dislike to. and anger against the husband, (witnesses Nos. 10, 14, 15, 16 and 17.) She then left him again and again took shelter with her mother, where she was down to the day when the latter was murdered. This is her own story; her husband says he turned her out of his house after the business in Jeyt, for intriguing with one Juddoo Bagdee, but he said nothing about this when before the magistrate.

The circumstantial evidence is to the following effect. The deceased, Matoo Mussulmanee, died or was murdered on 18th February last. The night before prisoner came to his mother-in-law's house at Henopara, and had an interview with and got food from his wife. His mother-in-law was not at home. He did not stay there all night, probably his wife prevented his doing so by refusing to make up her quarrel with him or to let him sleep with her. After prisoner left the house, clods of earth were thrown on to the roof, it is supposed by the prisoner, as he had done so before. Early next day he came to the house again, saw his wife, smoked, and again left, the wife says to hide himself in a sugar-cane-field near the house. Shortly afterwards the deceased returned home (from Manar) and almost immediately started again, her daughter says, for Duniakhali. She was then seen going to Duniakhali with the prisoner, who was quarrelling with her about his wife; and a little further on, near the village of Kanajooli, two *coss* from Henopara, she was again seen in company with the prisoner, who was arguing and disputing with her. He had a bamboo stick in his hand. Gopaul Chowkeedar heard (from the boy Raja, witness No. 1,) that the deceased had been struck down by the prisoner at the Chumpatola *ghat*, $1\frac{1}{3}$ mile ("three arrow-flights") beyond Kanajooli, in sight of the lad, went to the spot, saw the corpse and the skin on the skull cut with a blow, and gave information at the thannah. The thannahdar lost no time in proceeding to the spot and holding an inquest. The body was identified and the condition in which it was found formally recorded, and on enquiries being made in the immediate neighbourhood of the *ghat*, the evidence above detailed was

Witness No. 8.

Witness No. 8.

Witness No. 6.

Witness No. 5.

Witness No. 7.

elicited. The deposition of witness No. 5, was recorded on the 20th February, that of witness No. 6, bears no date. It was probably taken down on the same day. A slight bamboo stick was found near the place and has been produced on the trial as the weapon with which the crime was perpetrated. This may or may not be. It was perhaps found to comply with the terms of Section 14, Regulation XX. of 1817, as prisoner was not likely to have left it there. The medical officer pronounces the blow or blows on the head of deceased to have been the cause of death.

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Witness No. 4.

On 22nd February, (not 23rd, as stated in the calendar) the prisoner presented himself before the magistrate. He pleads (in addition to the allegation of his wife's infidelity with Juddoo Bagdee) an *alibi*. He says that on the day in question he was at a place called Gatoo cutting bamboos, that witnesses for the prosecution, Nos. 13 and 14, will prove he turned his wife, shortly before the mother's death, out of doors for bad conduct, and hence the persecution of his wife's family; and that the witnesses Nos. 18 to 21, will prove the *alibi*.

Witnesses Nos. 13 and 14, never heard of the wife's intrigue with any one, or that prisoner had driven her away from home; and witnesses Nos. 18 to 21, speak vaguely to prisoner having been cutting bamboos some day early in Falgoon at Gatoo, which is, however, but half a *coss* distant from Ramnugger, where prisoner resides, Ramnugger itself, being, I have ascertained, but five or six miles from Henopara, and six from Chumpatola *ghat*.

The prisoner does not suggest even how his mother-in-law died, or, if murdered, who killed her, nor can he explain who there was after his mother-in-law's death, who could or would have got up this charge falsely against him. Taking into consideration the direct and circumstantial evidence as a whole, the probabilities of the case as stated for the prosecution, and the unsatisfactory nature of the defence, I consider the charge proved against the prisoner as laid in the indictment, and I recommend that he be capitally punished for an offence, which, if proved, was most assuredly a deliberate and wilful murder.

The law officer also convicts on strong presumption of guilt, but he convicts of culpable homicide only, on the ground that the weapon used by the prisoner was not a *lethal* one.

I observe that the two witnesses to the *sooruthal* can neither read nor write. For such a purpose, witnesses should be selected who can (in the words of the law*) "subscribe their names to the paper."

* XX. 1817, Section 14, clause 9.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H Patton.) The additional sessions judge bases his conviction of the prisoner upon the evidence of the boy Raja

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Bagdee, who, he says, tells a tolerably consistent and certainly a probable story; and upon the circumstantial evidence, which he considers sufficient for conviction, even if the child's testimony be set aside.

We cannot place confidence in the evidence of the boy. When the discovery of the corpse was first reported at the thannah by Gopaul chowkeedar on 18th February, he said no more than that Raja had informed him of the fact of its lying in the bed of the river Gheea, where he went, and after examining it, called others to take charge of it. Now it is not likely that, if Raja had seen the murder committed, he would not have said so, or if he had, that Gopaul would have omitted to state it at the thannah, where on the contrary he mentioned that it was not known who had killed the deceased. The darogah was on the spot all the 19th, on which day deceased was first identified, but it was only on the 20th, that he announced to the magistrate, Raja's knowledge on the subject. Had the boy really seen what he then communicated, we consider that he would have told the chowkeedar at first, and therefore we set aside his evidence.

The circumstantial evidence, even if believed, only affords ground for suspicion against the prisoner, but there is much in it which we do not think trustworthy. It consists principally of the evidence of the wife, who is prosecutrix, and of witnesses Nos. 5 and 6 The first says her mother on return from Monad set out for Duniakhali *hât* followed by the prisoner, and the two witnesses depose that they passed them on the road quarrelling, but the prosecutrix gives such different versions of the occurrences of the previous evening and of the events of the succeeding morning, relative to the prisoner's visit to her mother's, at the thannah and before the magistrate and sessions judge, that reliance cannot be placed upon her testimony. For instance, at the thannah she stated that on her husband's arrival, she took refuge at Panchkouree's house and had no interview with him, while before the sessions judge, she deposed that he had wished her to pass the night with him and they had a personal struggle together; while both before the magistrate and sessions judge, she said nothing about having gone to Panchkouree's, and what she told these authorities of having seen the prisoner follow her mother towards Duniakhali, she was altogether silent upon before the darogah. She also tells discrepant stories about the prisoner picking up the bamboo with which he is supposed to have murdered the deceased. Before the magistrate, she told two stories, one that he had picked it up under a *bur* tree, while following deceased, the other, that he had left the sugar-cane field, where he had been concealing himself, with it in his hand.

It is remarkable that witness No. 8, Musst. Matoo, cousin of

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Case of GOPAUL SHEIKH.

deceased, who had come to her house apparently for the protection of the prosecutrix, and who has related the circumstances of the prisoner's visit for restoration of his wife, has disclosed nothing about the prisoner following the deceased in the manner described by the prosecutrix, and although witnesses Nos. 5 and 6, who, it may be observed, were only brought forward on the 20th, notwithstanding the notoriety of the murder for two days, say they met them on the road quarrelling, No. 5, allows that he had never seen them before, so his recognition of the prisoner is doubtful, and witness No. 6, says the prisoner had no bamboo in his hand, while he adds that the deceased actually in his hearing promised restoration of her daughter to the prisoner, so that if his evidence be credited at all, the cause of quarrel was likely to be removed.

It can admit of no doubt that the deceased was murdered; she was too poor to be murdered for the sake of robbery; besides what little property she had, was found by her side, so that suspicion naturally fell upon the prisoner, but as the evidence is, in our opinion, too weak to bring home the crime to him, even upon violent presumption, we acquit him and direct his release.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

PUDDOLOCHUN ROY (No. 1.) AND BHOWANYPERSAUD ROY (No. 2.)

Moorsheda-bad.

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Case of PUDDOLOCHUN ROY and another.

The prisoners should have been committed for murder. The judge's reception of a lower charge, contrary to his own view of the case, censured. The police enquiry was bad. Evidence of the witnesses appeared concerted; and on other accounts also totally incredible. Indistinctness of the medical evidence noticed. Prisoners were acquitted.

CRIME CHARGED.—1st count, No. 1, culpable homicide of Ramjeebun Doby; No. 2, being accomplice in the said crime and ordering it to be committed; 2nd count, Nos. 1 and 2, riot with culpable homicide, in which the said prisoners in order to take possession of some crops grown on some disputed land, belonging to the village of Joynteepore, illegally arming themselves, assembled and wounded Ramjeebun Doby, from the effects of which he immediately expired.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 29th July, 1856.

Remarks by the officiating sessions judge.—A difference of opinion between the law officer, who assisted me in this trial, and myself is the cause of this reference, and the circumstances of the case are these. On the 1st May last, information was taken to the darogah of thannah Khamrah, by witness, No. 5, Koodrut and No. 6, Nuffer Biswas, that the prisoners, Nos. 1 and 2, in the employ of Messrs. Watson and Co. of this district had with a large armed party attacked the witnesses, No. 1, Prokash Roy, No. 2, Mohabeer Roy, No. 3, Ramee Roy and one Ramjeebun Doby, (servants of a zemindar, named Rai Moheshnarain Roy) who were employed in guarding the crops on a *chur*, possession of which is being disputed between the above parties, and that the prisoner, No. 2, Bhowany Roy ordered, and the prisoner No. 1, Puddolochun had wounded the above Ramjeebun Doby. On the darogah's proceeding to the spot, the wounded man was found to be dead. The officiating magistrate therefore committed the prisoner on the charge stated in the calendar.

The witnesses named in the margin* distinctly swear to have witnessed the affair and to have recognised the prisoner, No. 1, and another party, not yet apprehended, strike the deceased with a *surkee* (or small spear)

* No. 1, Prokash Roy.
" 2, Mohabeer Roy.
" 3, Ramai Roy.
" 4, Shahush Mundul.
" 5, Koodrut Mundul

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No. 6, Nuffur Biswas.
„ 7, Wooj-ul Sheikh.
„ 8, Hafiz Pykur.
„ 9, Buxee Mundul.
„ 10, Jahan Mundul.

in the calf of the right leg, as he was running off from their attack, at the order of prisoner, No. 2, and another man not yet apprehended.

Witnesses named in the margin* prove the *sooruthal*, which states that the deceased had four wounds on the calf of the right leg; but the civil surgeon, witness, No. 14, deposed to there having been in reality only two wounds, both of which passed through the leg and consequently left four marks; (which would account for the witnesses to the *sooruthal* (being ignorant natives) imagining these marks to be distinct wounds;) and that these wounds had been caused by a sharp weapon like a spear, one of the blows having divided the artery and that the death of the deceased resulted from the loss of blood, occasioned by that wound.

* No. 4, Shobah Mundul.
„ 11, Hasamdee Biswas.
„ 14, Dr. A. Wilson.

It is in evidence that the attack was unprovoked and that a number of villagers were illegally cutting the crop on this disputed *chur*, when the witnesses, No. 1, Prokash Roy, No. 2, Mohabeer Roy, and No. 3, Ramai Roy, with the deceased interfered and called upon them to desist, when the prisoners with a large body of armed men came to the spot and committed the assault which has ended so fatally.

The prisoners pleaded *not guilty* and in their defence put forward the plea of an *alibi*, stating that they were at the day and hour named many miles from the spot.

The evidence adduced in support of this plea has, to my mind, failed to substantiate it. The witnesses for the *alibi* of prisoner, No. 1, have entirely failed to prove it, having broken down in cross-examination and having given evidence contradictory to each other, and the evidence for the *alibi* of prisoner, No. 2, is not such as can possibly invalidate the direct testimony of the eye-witnesses for the prosecution.

The prisoners had the benefit of the advice of an experienced vakeel, who, however, could only bring forward this plea of an *alibi* and attribute the charge to enmity, the plea of *alibi*, when it can be clearly proved, is certainly the best that can be put forward in defence, but can rarely be substantiated to the satisfaction of a court of justice in this country, and has completely failed in this instance, the prisoners moreover are unable to account for the wounding or death of the deceased, who undoubtedly died from the effects of the wounds deposed to.

The vakeel files copies of papers to show, that enmity exists between Messrs. Watson and Co., and Rai Moheshnarain Roy, but this tells either way, for it might as well have been the cause of the attack upon the servants of the Rai Moheshnarain

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Roy as it might be the cause of a false charge being brought against the servants of Messrs. Watson and Co.

The *futwa* of the law officer declares that the deceased died from the effects of wounds deposed to, which were inflicted by a *surkee*, but that in such case the charge should have been *katl âmd*, and not *shebah katl âmd*, as stated in the 1st count, and that therefore the prisoners are entitled to an acquittal and that for the same reason they must be acquitted in the 2nd count.

From this *futwa* I dissent, for although the weapon that caused death was of a murderous nature, and therefore the prisoners ought to have been committed on a higher charge by the officiating magistrate, yet I am of opinion that this mistake of the officiating magistrate, is not of sufficient importance to invalidate the charge, and to entitle the prisoner on that account to acquittal; and as the death of the deceased was caused by the act of the prisoner, No. 1, Puddolochun Roy, and as the attack would not have occurred, but for the orders of the prisoner, No. 2, Bhowany Roy, I consider him to be equally guilty with the prisoner, No. 1, who struck the blow, and therefore convicting them of the culpable homicide of Ramjeebun Doby, I recommend a sentence of imprisonment for seven years with hard labor in irons to be passed upon each of them.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The magistrate ought unquestionably to have committed the prisoners in this case for wilful murder, in conformity with the instructions contained in the Circular Order of the 16th July, 1830. It was equally the duty of the sessions judge, however, who states it as his opinion, that the prisoners should have been committed on a higher charge, to return the commitment to the magistrate for amendment, the course distinctly prescribed to him in the Court's Circular of the 14th November, 1851. To proceed, as he has done, to try the prisoners for culpable homicide, when he was of opinion that they ought to have been tried for murder, was most irregular and improper.

From the view which we take of the case, however, this error is not of so much consequence, as it might have been. We are unable to concur in the judge's conviction of the prisoners. The police investigation is most unsatisfactory, and the evidence for the prosecution is of a very suspicious character. The darogah does not appear to have proceeded to the spot, where the attack is stated to have taken place; and we are left in ignorance whether the crops on the *deara* had been cut as stated by the witnesses for the prosecution or not; and whether the blood of the deceased, which must have flowed in large quantities from the severed artery, was or was not to be traced on the ground, where the assault is charged to have been committed. These

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were obviously the very first points to which the darogah ought to have directed his attention, as they afforded a ready test to a certain extent of the truth of the prosecutor's story; and we cannot but think that if the eye-witnesses, who are very much in the position of prosecutors in this case, could have corroborated their statements by pointing out the blood on the ground and the plundered crops in the neighbourhood, they would have taken the darogah to the spot themselves, and would have insisted on a *sooruthal* of the localities.

It is incumbent on the darogah, under Section 18, Regulation XX. of 1817, to endeavour, in such cases as this, to procure the evidence of persons unconnected with the parties; but nothing of the sort seems to have been attempted. The witnesses are all servants or ryots of the zemindar, Moheshnarain Roy; and some of them reside on the opposite side of the river Pudda, to that on which the assault took place.

The evidence of the eye-witnesses has all the appearance of having been learnt by rote. Their statements do not merely agree precisely in every minute particular, but they are given on all material points in the very same words. All of them hear Bhowany give the order to beat in the same phrase; all fly and all look over their shoulders at precisely the same moment, so as to see Puddo strike one blow and Ramanund subsequently strike two or three; all estimate the distance run by the deceased, before he was struck by Ramanand, at exactly the same figure; and to the end of their depositions, the particulars dwelt upon by each are identical.

Passing over minor improbabilities and discrepancies between the first and subsequent depositions of the witnesses, which have been pointed out by the defendant's pleader, we note the suspicious fact, that the deceased is described by the civil surgeon to have been a healthy and a vigorous young man; while the defendant who is said to have outstripped the whole body of 250 *lattials* in the chase, and to have overtaken and wounded the deceased, is an old man of fifty-two, and a person who from his position as jemadar or superintendent of the factory cultivation, was very unlikely to have been armed with a *surkee*.

We find further an absence of all motive for the assault. The zemindar's burkundazes, according to the witnesses' statements, were only four in number. They offered no opposition, and ran away the moment they saw the opposite party coming. To crown all, we observe that the whole of the eye-witnesses depose, in the most circumstantial manner, to what is clearly a deliberate falsehood. It appears that when the body of the deceased was examined in the mofussil, the impression of the bystanders was that there were four distinct wounds in the leg. The prosecutor's witnesses have accordingly framed their story, so as to meet this state of facts. They swear that Puddolochun

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first inflicted one wound, and that Ramanund followed and inflicted *two* or *three*. When the body was examined by the civil surgeon however, it turned out that there were in reality only *two* wounds. It is impossible, we think, for any one who reads the evidence, and observes the minuteness with which witness after witness details the circumstances attendant on the wounding of the deceased, to suppose that this could possibly have been a mistake. It is clearly intentional, and is fatal to the credibility of the evidence

We acquit the prisoners and direct their release.

We should have ordered the witnesses for the prosecution in this case to be committed for perjury, but that the evidence of the civil surgeon has been so carelessly given, that it would be impossible to found a conviction upon it. In his letter to the magistrate, reporting the result of his examination of the body, he describes *one* wound and says: "I did not observe any other wound or mark of injury on the body." In his evidence before the magistrate he says: "There was also another superficial wound on the same leg." Before the judge he states, that "there was also not far from it" (the principal wound) "another wound, but this was merely superficial and of no consequence; but it passed superficially through the integuments of the leg, so that a native may have considered them to be four wounds; but in reality there were only two." He states also that he "cannot say from the appearance of the wound, whether it was inflicted from before or behind; because, it was probably inflicted by a weapon of about the same breadth throughout." This is a very unsatisfactory answer, and we cannot comprehend, why the judge did not question the civil surgeon further on this point, which was one of great importance. If the wound was given from behind, the orifice in front of the leg must necessarily have been considerably lower than that behind; and the reverse must have been the case if the wound was given in front; while, if the two orifices of the wound were on a level, the inference would be that the man must have been lying down when the wound was inflicted. The judge will be good enough to furnish the civil surgeon with a copy of these remarks; and to be more careful himself in future not to leave in doubt a point of so much importance to the elucidation of the case.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT, ANUNDEERAM DOSS AND OTHERS
versus
TARAPERSHAD PAHAREE (No. 7,) SHAMAPERSHAD BHUTTACHARJEE (No. 8) JAGOO MYTEE (No. 9,) GUNGARAM MYTEE (No. 10,) DEBEE MYTEE (No. 11,) BHEEKUN KHAN (No. 12,) CHOONA KHAN (No. 13,) SHEIKH UNWAR (No. 14), RADHAKISTO MYTEE (No. 15,) NEDHOO BARICK (No. 16,) BISTOO MYTEE (No. 17,) AND BUNGSHEE GHURAN (No. 18.)

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Previous to a conviction for murder or aggravated culpable homicide, it is not *indispensably necessary*, that the body should be found; the evidence of parties who saw the body of person murdered *when dead* is sufficient toestablish the fact of the death of the person with whose murder a party may be charged.

Prisoners, Nos. 7 and 8 convicted of being princi-

CRIME CHARGED.—Nos. 7 to 15, 'wilful murder of Anundee Raout, Kaleechurn Doss and Neemchurn Doss, in having severely beaten them with ruler and blocks of wood, and in having suffocated Anundee Raout, by which injuries their death was caused.

Nos. 16 to 18, privity to the above murder.

Committing Officer.—Wuheeoodeen Nubee, deputy magistrate of Nugwan.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 26th July, 1856.

Remarks by the officiating sessions judge.—The prisoners plead not guilty.

The circumstances of the case are as follows:

On Monday, the 4th Boisnak, corresponding with the 14th April last, one Debee Mytee, prisoner No. 11, a servant of Tarapershad Paharee, prisoner No. 7, was seen* bringing from their villages towards his master's house the three persons, Kaleechurn Doss, Neemchurn Doss and Anundee Raout, who are said to have deceased. These men, not having returned home by Tuesday night, one of the prosecutors, Anundee Doss, proceeded on the Wednesday morning to Tarapershad Paharee's, prisoner No. 7, to obtain intelligence of them.

* The prosecutor Anundee Doss.
Wit. No. 13, Hurry Mytee.
" " 16, Nursing Pattur.
" " 21, Soondur Doss.

After waiting till the evening, he obtained an interview with the said Tarapershad at his *bakhar-baree* or store-house. The prisoner after nightfall took him aside to a tank; and, as he swears, there told him that three men of the village of Dharas, whom Debee Mytee brought had been killed, and enquired of him if they had any relations. Anundee Doss answered in the affirm-

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ative mentioning them, but carefully concealed that he himself was the brother of Kaleechurn. Tarapershad, the prisoner No. 7, then desired him to take money to distribute among influential people of Dharas to hush up the matter.

This, Anundee Dass consented to do the next morning, making the lateness of the hour his excuse for not taking it that night. The prosecutor was then made to swear to secrecy by placing his hand on the person of the prisoner, and allowed to go. He deposes to having been in the employ of the prisoner, who knew that he resided at Khadooah, adjoining the village of Dharas, and to this is attributed the confidence reposed in him.

This story of the prosecutor may appear strange; but on the supposition that the charge is true, there is no such inconsistency as to render it unworthy of belief. If it was necessary to conceal, it is not improbable that advantage should have been taken of Anunderam Dass's opportune presence.

On reaching home, this man informed Jankeeram Doss and Jhopee Bewa, relatives of two of the missing men, of what had occurred, they declined to receive the hush money and all proceeded that night to Nugwa, and next morning presented a petition to the deputy magistrate, charging Tarapershad, prisoner No. 7, with the murder. Unfortunately the deputy magistrate was unable from severe sickness, to which may be attributed many of the oversights and irregularities observable in this case, to undertake the enquiry in person; and the darogahs of Nugwa and Nemal were deputed to do so.

For three or four days no further evidence of the crime or clue to the offenders or traces of the missing persons were found. The darogahs appear to have done little else than striven to blacken the character of the prosecutor, whom they very unnecessarily sent back to the deputy magistrate, that his deposition on oath might be taken before that officer.

The darogahs were threatened with consequences, if they failed to use every exertion to sift the case to the bottom. From their conduct up to this time, I can see nothing to show that these men were inimical to the *prisoner*, rather the contrary.

On the 20th April, however, Tarapershad Paharee was arrested by them. On the 21st or the fourth and fifth day after their arrival at the spot, one Pholail Singh, Chuna Khan and Debee Mytee confessed. The former pointed out in a tank, close to the storehouse of prisoner, No. 7, three bamboos, on which he stated the bodies of the three missing men had been slung and carried to a *maidan*, about the centre of which they were deposited, near to a pond, about two and half miles from the village of Beyta Moheshpore, where the prisoner No. 7, Tarapershad Paharee resides.

pals in aggravated culpable homicide and sentenced to imprisonment in transportation for life; prisoners Nos. 9, 10, 11, and 15, convicted of being accomplices in the above crime and sentenced to 21 years' imprisonment in labor and irons; prisoners Nos. 12, 13, and 14 of being accessaries after the fact to the above crime and sentenced to ten years' imprisonment with labor; and prisoners Nos. 16, 17, and 18 of privity to the above crime and sentenced to seven years' imprisonment with labor in irons. Sessions judge directed to inform the magistrate that in all cases in which a knowledge of the crime committed may be proved or pre-

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Search being made in that direction, portions of two skeletons were found as indicated by Pholail Singh, and close to the edge of the pond some clothes, a *mala* and three keys attached to a *ghoonshee* or horsehair chain for the waist.* The prosecutor swore that one of the skulls was that of his brother, known to him by its having fourteen teeth in the upper, and the same number in the lower jaw; that the other was the skull of Anundee Raout, from the teeth being excessively stained with pawn-juice, and Jhopee, also swore to the recognition of this, her brother's skeleton. This woman died before her evidence could be taken on the trial, but her deposition given before the deputy magistrate has been attested and placed with the record. Night set in so, that search for traces of the other body was deferred. The next morning a toothless skull with a few bones was found not far from the same spot which Jankeeram Doss swears was that of his cousin Neemchurn Doss. These portions of skeletons were taken care of and have been produced before the court.

* No. 10, Ramsing Burkundaz.
 „ 28, Ramdour Singh Jemadar.
 „ 30, Ruthco Baiq.
 „ 31, Nagoo Mundul.
 „ 32, Muneeroodeen Burkundaz.

In rapid succession to this, the other prisoners before the court were arrested, all but Tarapershad Paharee prisoner No. 7, admitted their criminality in a greater or less degree, and were forwarded to the deputy magistrate's court, where they repeated their confessions. That officer tendered pardons to Pholail Singh and Lall Mahomed. I confirmed that of the former, as he was clearly instrumental in the recovery of the skeletons, &c., aforesaid, and his story was consistent throughout. In regard to the pardon offered to Lall Mahomed, I could not do so.

He had admitted himself to have been a principal before the darogah, and deviated in his subsequent statements; sound discretion, it appeared to me, had not been exercised in the offer of pardon to this man, and I did not sanction it, but directed his commitment for trial.

[Margin: ...sumed from the evidence, and in which together with that knowledge any act or acts done with a view of assisting the principal criminal be proved before him, the parties against whom such evidence exists should be committed for accessaryship after the fact, and not for privity to the crime itself. The Court's Circular Order No. 8, dated 7th June, 1847, should be brought to the notice of the magistrate.]

Pholail Singh, distinctly swears that he was a "*chabook sawar*" in the employ of Tarapershad Paharee; that on the day in question, the three deceased men were brought to that prisoner's storehouse near to which he (Pholail Singh,) lives. That after this, he saw prisoner No. 7, with a ruler in his hand, and Shamapershad Bhuttacharjee, prisoner No. 8, proceed together from the former's dwelling-house to the said storehouse; that subsequently hearing the cries of men, he opened the door of it, and saw prisoners noted in the margin,† two Mussulman servants of Cuttack, and

† No. 7, Tarapershad Paharee.
 „ 8, Shamapershad Bhuttacharjee.
 „ 9, Jogoo Mytee.
 „ 10, Gungaram Mytee.

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prisoners No. 11, Danee Mytee, and No. 15, Radhakisto Mytee, beating the aforesaid three men, who had been previously bound, with a ruler and heavy pieces of firewood; that he being detected looking on, was turned out and the door shut against him; that after the duties of the day were over, he was about to retire to rest, when at a little after 11 o'clock P. M., he was sent for by No. 7, sworn to secrecy, his life threatened, and thus made to accompany the other servants of the prisoner and throw away the bodies.

The evidenc of Pholail Singh, is strongly corroborated by the circumstantial evidence.*

The name of Bimlee Bewa, as a witness was mentioned at a very early stage of the enquiry, viz. on the first deposition given by the prosecutor, Anundeeram Doss, the police then complained of her having been kept out of the way. The others were *jattrakars*, who attended the *poojah* at the prisoner's house, and one, a servant of Ruggoonath Paharee, the prisoner's father. It is most improbable that any of these should have been actuated by malice to the prisoner.

* Wt. No. 22, Beeroo Barick.
" " 23, Bimlee Bewa.
" " 24, Kistomohun Chuckerbutty.
" " 25, Ramlochun Ditto.
" " 26, Ramkisto Ditto.
" " 27, Soondurnaran Ditto.

It has been attempted on the part of the prisoners to show that the confessions were extorted by the police, but this is not proved, nor is there a shadow of proof of this, as regards the confessions made before the deputy magistrate of Nugwa, and the assistant magistrate Moulvee Dirasutullah, Moonsiff of that place. A reasonable time, two hours and more was, I find, by an order on one of the police reports, allowed to the prisoners for consideration, and there is no reason to believe that any undue influence or intimidation then prompted their confessions.

In regard to the recognition of the portions of two skeletons and the third skull and bones, which were found, there is undoubtedly some difficulty. Anundeeram and Jankeeram, the prosecutors, unhesitatingly swear that they recognized those of Kaleechurn and Neemchurn.

The former swore to the number of teeth in his brother, Kaleechurn's head, and as unhesitatingly said the same in regard to his own, and another brother's; and that Anundee Raout's skull was known to him by the teeth being deeply stained with *pawn*-juice.

Jankeeram's recognition of Neemchurn's skull is founded on the fact of its being entirely toothless. Owing to Jhoopee's death, her evidence, as before stated, could not be taken in this court. There still remains to be considered the value of the evidence in regard to the clothes, the *mala*, keys and horse-

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hair *ghoonshee* or girdle found* near the imperfect skeletons. These have been distinctly sworn to as belonging to the deceased, Neemchurn, by the witnesses noted in the margin.† Some witnesses hesitated to point out the clothes owing to their having been, through the negligence of those entrusted with them, soaked in mud and water; but I lay no stress on this, for one of these men, Hurree Mytee, was evidently reluctant to give evidence against the prisoners, and at first pretended not to recognize the prisoners, No. 8, Shamapershad Bhuttacharjee, and No. 18, Bunshee Goraee, as having confessed before the police, in his presence. The keys above mentioned were taken by the jemadar of police to Neemchurn's house, and were found to fit two padlocks and a *kullumdan* belonging to him.‡

* No. 10, Ram Singh.
„ 28, Ram Dour Singh Jemadar.
„ 30, Ruthee Baiq.
„ 31, Nagoo Mundul.
„ 32, Muneerooddeen Burkundaz.

† Witness No. 13, Hurree Mytee.
„ „ 15, Radhoo Barick.
„ „ 16, Nursing Patur.
„ „ 33, Sreemotee Kishoree.

‡ No. 28, Ram Dour Singh Jemadar.
„ 33, Sreemotee Kishoree.
„ 34, Urjon Mytee.

The skeletons, &c., were sent for the examination of the native doctor at Nugwa, who, in his evidence before the court, stated that these portions of skeletons were fresh, had blood and particles of flesh adhering to them, and the brain still in the skull. He stated his opinion that death in each of the three instances must have occurred at about the same time. The shortest limit he allows, viz., twelve or fourteen days, for death to have taken place before his examination, exceeds by two days, the time which had actually elapsed since the date on which the murder is said to have occurred. But a far less period, viz. eight days, was deemed sufficient by the civil surgeon, called in for the defence, to account for the state of decomposition to which the bodies had been reduced. The native doctor declares that the teeth of one skull were very unusually stained with "*pawn*" juice, and that another skull was toothless; this the civil surgeon, Dr. Bogle, confirmed answering to a question put by the court, that there was no appearance of the sockets of the teeth in the lower jaw, they might have been absorbed by the natural process, those of the upper jaw appear to have been broken.

The spot where the bodies were found is unfrequented, there is no place near it for the cremation of bodies, nor is there any reason for believing that the bodies of other persons had been thrown in the neighbourhood. The missing men have not since been seen or heard of, nor is it urged that they are alive. There is therefore the strongest presumption that the evidence of Pholail Singh is true and faithful. I can discover no ground what-

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ever for supposing that this case has been trumped up through enmity.

The evidence for the prisoner, Tarapershad Paharee, purports to show that for the entire five or six days of the *poojah* he never left his dwelling-house, which is stated to be at a distance of from twenty and twenty-five *beegahs*, to as far as the voice will reach from the *bakhar-baree* or storehouse.

In the cross-examination of these witnesses by the Government vakeel, as to ceremonies and forms that were observed during the *poojah*, necessary to test their statement that the prisoner No. 7, never left their sight, they contradicted themselves, and left an impression that they were resolved to save the prisoner at all hazards.

Similar grounds for distrusting the other evidence for the defence exist; it in no degree shakes that for the prosecution.

I am bound to say that the evidence of Dr. Bogle is opposed to the supposition that the portions of the skeletons produced in court could be recognized as having belonged to any particular person, and I desire to give all the weight that is due to this testimony, but the strong presumption that these portions of skeletons are those of the missing men, does not rest solely on such recognition. Clothes, a *mala* and keys were found* near them, and there is the evidence of the approver, Pholail Singh.

* No. 10, Ram Singh.
" 28, Ram Dour Singh Jemadar.
" 30, Nagoo Mundul.
" 31, Ruthee Baiq.

The *futwa* of the law officer bars *kissas* and declares the prisoners liable to *seeasut* and *tazeer*, and as the bodies were not found in a state that would lead indubitably to their identification, I would refrain from recommending capital punishment.

There is no room left to doubt the motives which actuated the prisoners to commit this outrage, though direct evidence is wanting. It is evident from the confession of prisoner, No. 9, Jugoo Mytee, taken before the police on the 22nd April, as also from other parts of the record, that a *pootee* belonging to Shamapershad Bhuttacharjee, prisoner No. 8, and a large sum of money of Tarapershad Paharee, prisoner No. 7, had been stolen in the month of Phalgoon preceding, and that the deceased persons were suspected of the theft and arrested by the prisoner No. 7's orders.

As to the malice, which actuated the prisoner, it is quite possible they did not at first intend to destroy life, but the excessive beating inflicted on these men was so cruel, and merciless, that it fully warrants the presumption of *deliberate malice* on their part. I would therefore convict the prisoners, from Nos. 7 to 11, and prisoner, No. 15, of being principals of the first degree in the murder of Kaleechurn Doss, Anundeo

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Raout and Neemchurn Doss, and would recommend that they be sentenced to imprisonment in banishment for life with labor in irons, and prisoners, Nos. 12 to 14, of being accessaries after the fact, and that they undergo 21 years' imprisonment each, and prisoners, Nos. 16 to 18, of aggravated privity to the murder, and recommend that they be sentenced to 14 years' similar imprisonment.

These three last prisoners should have been charged with being accessaries after the fact, but the 4th paragraph of Circular Letter No. 15, of 7th July, 1848, precluded my ordering their commitment for the higher offence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) As remarked by the sessions judge in the 3rd paragraph of his letter, referring this case, the police at first instead of using strenuous exertion to discover the bodies of the missing persons, contented themselves with blackening the character of the prosecutor Anundee Doss; and it was only after they had become aware that the deputy magistrate was quite alive to all their proceedings, that they exerted themselves to discover the crime, and the perpetrators of it. The statement of the prosecutor on the record discloses, it is evident, only a portion of the circumstances known to him; as recorded, it bears, as remarked by the sessions judge, a strange character; nevertheless, as it leads to the discovery of the crime and the perpetrators of it, both of which facts are proved by the independent evidence of other parties, its own incompleteness is not of great moment. Of the prisoners before the Court, Nos. 7 to 15, are charged with the wilful murder of Anundee Raout, Kaleechurn Doss and Neemchurn Doss; and prisoners Nos. 16 to 18 are charged with privity to the above murder.

Looking to the *crime* with which the prisoners stand charged, it is to be observed that according to the deposition of Dr. Bogle, it was not possible to recognise the bones which were found, as those of any particular person; and that of the property found near the different remains, that only found near those alleged to be the remains of Neemchurn Doss were proved satisfactorily before us, to belong to that individual; these deficiencies in the evidence are, however, of no moment; for, in the present case, we have the trustworthy deposition of a person who was present when the murderous act was done; and who saw the bodies of the deceased, *when dead;* so that the fact of the death of the parties, with whose homicide the prisoners are charged, is beyond question.

All the prisoners pleaded not guilty before the sessions judge; they all, however, with the exception of prisoner No. 7, confessed to a greater or less degree of complicity in the crime, laid to their charge, both before the police and the deputy magistrate.

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From the evidence of witnesses on the record, it is clearly proved that the three deceased persons were summoned by Debee Mytee, prisoner No. 4, to the granary of prisoner No. 7; that they in company with him proceeded thither; that they took with them a *pootee* or sacred book, which had been stolen from the house of prisoner No. 7, belonging to prisoner No. 8, who was the Gooroo of prisoner No. 7; that on their arrival at the granary of prisoner No. 7, and on their producing the *pootee*, they were told to produce the other property which they had stolen; that failing to do this, and asserting at the same time their want of all knowledge of the property, they were, at the order of prisoners Nos. 7 and 8, and also by prisoner No. 7 and the other prisoners Nos. 8, 9, 10, 11 and 15, beaten to such an extent, that they subsequently died of the effects of the maltreatment they received; that subsequently again, at the order of prisoner No. 7, the other prisoners above named, with the exception of the prisoner No. 8, and also prisoners Nos. 12, 13 and 14, who had been present at the beating, though not consenting thereto, and also prisoners Nos. 16, 17 and 18, with a view of screening the guilt of the principal prisoners Nos. 7 and 8, removed the corpses from the granary, and carried them to the spot, where, though in a state not admitting of recognition, they were found by the police.

The evidence against the prisoner No. 7, consists of that given by witness No. 1, corroborated in all the material points by that of witnesses, Nos. 22, 23, 24, 25, 26 and 27; discrepancies there are here and there, but these are not greater than what might be expected from the depositions of witnesses to a transaction seen by them all not at one and the same time. The confession of the other prisoners duly attested and the circumstances in evidence, corroborating them, bring the crime home to all of them.

The defence set up by prisoner No. 7, to the effect that he remained in his own house, about twenty-five beegahs distant from the granary in which the crime was committed, on the date in question, entirely broke down; his witnesses being guilty of various contradictions, their evidence is not trustworthy. The defence of the other prisoners, to the effect that their confessions were extorted from them by the police, is, as remarked by the sessions judge, not proved; and that their confessions before the deputy magistrate were voluntarily given is shown clearly from the evidence of the witnesses on the record.

From all the above circumstances we convict prisoners Nos. 7 and 8, of being principals in the aggravated culpable homicide of Kaleechurn Doss, Anundee Raout and Neemchurn Doss, and sentence them to imprisonment in transportation for life. We convict prisoners Nos. 9, 10, 11 and 15, of being accomplices in the aggravated culpable homicide of the abovenamed persons,

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and sentence them to twenty-one years' imprisonment in labor and irons; prisoners Nos. 12, 13 and 14, of being accessaries after the fact to the aggravated culpable homicide of the above persons, and sentence them to ten years' imprisonment with labor in irons; and prisoners Nos. 16, 17 and 18, of privity to the above crime, and sentence them to seven years' imprisonment with labor in irons.

We entirely concur in the opinion expressed by the sessions judge in the last paragraph of his letter of reference; and direct that he will inform the magistrate that in all cases, in which a knowledge of the crime committed may be proved or presumed from the evidence, and in which together with that knowledge any act or acts done with a view of assisting the principal criminals be proved before him, the parties against whom such evidence exists should be committed for accessaryship after the fact and not for privity to the crime itself. The Court's Circular Letter No. 8, dated 7th June, 1847, should be brought to the notice of the magistrate.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND GOUHUR MEER
versus
MUNNOO MULLICK.

Midnapore.

1856.

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Case of MUNNOO MULLICK.

Appeal rejected.

CRIME CHARGED.—Arson, in having wilfully and maliciously set fire to the house of the prosecutor, Gouhur Meer.

CRIME ESTABLISHED.—Arson.

Committing Officer.—Moulvee Golam Sufdur, law officer, (with powers of a magistrate) Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 13th June, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty,*" but he was detected in ipso facto and seized as he was running off by Beenoo Mullick, Koorban and the prosecutor; this is fully corroborated by the evidence of Ali Khan and others. Beenoo Mullick is the brother and Ali Khan the brother-in-law of the prisoner, and both would, no doubt, have gladly evaded the duty of seizing him, but it was thrust on them so suddenly and unexpectedly that it was not to be avoided.

The reason of the prisoner's conduct was evidently enmity against the family of the prosecutor, whose father and brother,

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Boseer Meer, witness No. 6, had, on former occasions, been instrumental in bringing the prisoner to justice. The prisoner is a bad character, and had been sentenced to one year's and again to two years' imprisonment, which last *sentence* was confirmed on appeal. The jury find the prisoner guilty, and, concurring in that verdict, I have sentenced him to seven years' imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The evidence is conclusive of the prisoner's guilt. He urges nothing in appeal of the slightest consequence. We confirm the sessions judge's sentence.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MEER KORBAN ALLEE

versus

MEER BHUTTOO.

Bhaugulpore. 1856. September 17. Case of MEER BHUTTOO. The appeal of the prisoner, convicted of theft, rejected.

CRIME CHARGED—1st count, theft of property, valued at Co.'s Rs. 1,245-8, belonging to Musst. Pearie Begum, mistress of the plaintiff; 2nd count, receiving and possessing stolen property valued at Rs. 842-1-11, knowing at the time of receiving it, that it had been obtained by theft.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. A. Eliott Russell, magistrate of Bhaugulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 28th May, 1856.

Remarks by the officiating sessions judge.—This case was tried by the aid of jury* at Bhaugulpore, on the 27th and 28th May, 1856.

* Khyratee Sahoo.
Hazaree Sahoo.
Goberdhun.

The prisoner pleaded *not guilty*.

It appears that about three months previous to date of occurrence, Musst. Pearie Begum, the widow of Meer Abid Allee, late a resident of Bhaugulpore, proceeded to Peer Pointee after having left her house in charge of Meer Korban Allee and Meahjan, her servants, locking the doors and taking the keys with her, after burying in an eastern room of the *howelee* or enclosure, rupees and ornaments valued Rs. 1,245-8, in the presence of the above servants and witness No. 1. Three months afterwards she returned, and on opening the door of the room in which her treasure was concealed, she found that some one had stolen it. On interrogating the servants they denied all

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knowledge of the theft, as the lock was unbroken, but they suspected the prisoner who resided at mouzah Jafrah, pergunnah Chye, who had been brought up by Meer Jafer Ali, cousin to Meer Abid Ali deceased, and had the entry into the house at all times. Moreover, he used to sleep occasionally during the Begum's absence in the eastern *verandah* near the room in which the treasure was concealed. On this suspicion and at the requisition of the prosecutor Korban Allee, the darogah proceeded to Jafrah and on the 9th March, 1856, in his presence and that of witnesses Nos. 13, 14, 15 and 20, searched prisoner's house, when Rs. 713, ornaments valued 108 rupees, in a box, and fourteen *thans* of coarse cloth were discovered and identified as Mussumut Pearie Begum's property. It was also ascertained that the prisoner had made every arrangement prior to committing the theft, and either with a duplicate key or other means must have picked the lock and removed the treasure, and to effect this object, he induced a boy, witness No. 21, of about ten years of age, to accompany him to Bhaugulpore, to assist in carrying away the spoil. This boy deposed that according to prisoner's entreaties he accompanied him to the Begum's house, and after remaining there two days he was ordered to take a bundle containing rice to prisoner's house; after their crossing the river Ganges the prisoner opened the bundle and placed in it a bag, the boy was then directed to proceed and on raising the bundle he observed that it was very heavy, he enquired of the prisoner the cause, he replied it was only some "*arhur dal*" and told him to go on, which he did, and on their arrival at Jafrah, he received an anna for his trouble. The prisoner purchased from witness No. 14, a buffalo for Rs. 7, also, through witness No. 22, he purchased several *thans* of common cloth valued 12 Rs. The same witness also procured for him 20 Rs. worth of rice from one Sheikh Jatee, a resident of mouzah Kurree. These articles, he stated, were required for a ceremony he had to perform after the birth of a child.

Witnesses Nos. 13, 14, 15 and 20, depose to the finding and identification of the Begum's property discovered in prisoner's house, while No. 18 witness is the silversmith who made the ornaments.

Witnesses Nos. 1, 2 and 3, depose to apprehension of prisoner near the Serai in Bhaugulpore, with Rs. 17-13-11, on his person and wearing three silver rings identified as the Begum's property, one was set with a red stone in which was engraved an Arabic verse The prisoner had evaded the vigilance of the police; witness No. 1, hearing that they were in search of the prisoner, acted properly in apprehending him, and I have awarded to him Rs. 10 for his meritorious service.

Witness No. 16, accompanied prisoner from his house at Jafra to Bhaugulpore as a cooley, and is aware that he had about

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200 Rs. on his person, where he purchased several articles in the market.

The prisoner on the 9th March, 1856, confessed before the police implicating the Begum's servants, Korban Allee and Meahjan, who, he states, awoke him in the middle of the night, took him to the verandah of the eastern room, telling him that the money and the ornaments were concealed in it, proposing to disinter it; he saw that they conjointly obtained the whole of the property, of which they gave him Rs. 60 and three rings and they left the remainder; the money he received had been expended on his own expenses, but the rings he produced were those he received from the Begum's servants.

Witnesses Nos. 5 and 7, depose to this confession being voluntary. On the 10th March, 1856, the prisoner made the same statement before the magistrate, witnesses Nos. 8 and 10, bear testimony to the confession being voluntary.

On the 14th idem, the prisoner stated, before the same authority, that the property found in his house was given to him by the Begum's servant to keep, and with a portion of the 60 Rs. he purchased several *thans* of coarse cloth.

Witness No. 12, proves this statement to have been voluntary. The prisoner, in his defence before this court, recapitulates what he stated before the police and magistrate, and details all the other circumstances connected with the case which are supported by the evidence for the prosecution; he named witnesses Nos. 16, 21, 22 and 23, who would prove that Korban Allee and Meahjan gave him the property found in his house to keep, for, owing to the Santal insurrection, it was unsafe to deposit it any where in Bhaugulpore. These witnesses do not corroborate this statement.

The jury return a verdict of guilty against the prisoner, and although there was some little discrepancy of the witnesses for the prosecution, regarding the concealment of the property in the Begum's house and the box in which the property was secreted in the prisoner's house, which circumstances are important to the issue of the case, I concurred in the finding, and sentenced the prisoner to seven years' imprisonment with labor and irons and under Act XVI. of 1850, to pay a fine of Rs. 403-6-1, as compensation for the loss sustained by Musst. Pearie Begum, the prosecutor's mistress.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with this conviction. Had the plea urged in defence been true, the prisoner would have put it forward before the magistrate. We reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

KHONKAR NUSSEERUDDEEN AHMUD ALIAS NUSSROO MEEAH.

Hooghly.

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Case of NUSSEERUDIN AHMED *alias* NUSSROO MEEAH.

The appeal of the prisoner, convicted of dacoity, rejected.

CRIME CHARGED.—1st count, dacoity on the night of the 20th February, 1847, in the house of Moulvee Ekramul Huck of Chowghurreah, thannah Umbica, zillah Burdwan; 2nd count, being an accomplice in the above crime; 3rd count, having instigated the above crime.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the dacoity commissioner.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 15th May, 1856.

Remarks by the additional sessions judge.—The prisoner Khonkar Nusseeruddeen Ahmud *alias* Nussroo Meeah, is charged with participation in the dacoity at Chowghurreah, on the night of the 20th February, 1847. He was arrested on this charge by the dacoity commissioner's people on the 19th March, 1856. The direct evidence against him is the testimony of the two approver witnesses, Nobin Ghose and Debee Ghose. Nobin Ghose's original confession was made on 21st April, 1854. It was at great length, and gave the particulars of the dacoity in great detail. The master of the house was maltreated and two of the dacoits wounded, and on leaving the premises the villagers headed by an up-country merchant twice attacked the dacoits in a mass. This approver said in his confession regarding the prisoner that the night before the dacoity they all assembled at prisoner's house at Tazpore, headed by Kangaleo Mussulman; that next morning the prisoner gave every man who accompanied this approver two annas for his dinner on the road; that on their march towards Chowghurreah the prisoner, whom they had left at his house at Tazpore, passed them in silence on the road on horseback; that they all followed the prisoner; that on reaching Russoolpore, a mile or so from Chowghurreah, they were furnished with weapons from the house of a Meeah, related to the prisoner; that amongst those engaged in this dacoity prisoner was one, and that the prisoner fled at the commencement of the fight with the villagers.

In his evidence before me this approver witness has given a different account of a few of the circumstances, especially with regard to the plunder obtained by him and his brother sentries

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independent of the gang; but on the whole his testimony has been consistent and he has been subjected to a very severe and protracted cross-examination to try his accuracy. He has in no single matter swerved from any thing he has before affirmed *with regard to the* prisoner; and nine prisoners in two cases have been already tried and convicted for this dacoity on the same evidence.* Four of the gang were punished for it in 1847, immediately after it occurred.

* Nundo Ghose and seven others, and Tareef Sheikh.

The second approver Debee Ghose also confessed to this dacoity, and long before the prisoner was arrested for it,† and his account of the circumstances attending the commission of the crime was also most full and particular. In his examination now he has adhered to all his former statements. The prisoner, he said in his confession dated 10th November, 1854, received them on their way to Chowghurreah; that he was one of the party who committed the dacoity; that he accompanied them on horseback, and that the prisoner was, he believed, actuated by ill-feelings towards the person whose house was attacked, being a man of substance.

† Viz. on 10th November, 1854.

There were two gangs employed on this occasion, and neither the approvers nor three of the four persons seized and punished at the time had before acted with the prisoner in committing dacoity; but Kangalee Mussulman, they say, introduced them to him; and he, they add, had been, they had heard, previously concerned with him in such affairs, but this, I think, is doubtful. The 1st approver stated in his original confession that from the opposition the party met with, there was no opportunity of dividing the spoil, and that the prisoner kept the greater part of it. It seems doubtful whether in this instance the prisoner's object was solely plunder, or partly that, and a wish to injure Ekramul Huck, the owner of the property.

The above direct evidence against the prisoner is most strongly corroborated as follows.

1st. Of the dacoits arrested and punished in 1847, for this offence, one Golam Sheikh, (since dead) in his confession dated 8th March, 1847, implicated the prisoner, giving such particulars regarding him as could not have been fabricated, had there been any occasion for fabricating them. He said he (Golam) did not join the dacoits in the actual attack, but no mofussil confession ever extends thus far; and he was clearly shewn to have done so, and convicted of it. He asserted that he had gone to Burdwan to see his brother, one Rohil Sheikh, a chuprassee in the service of the principal sudder ameen, Fuzzul Rubbee, (the prisoner *having married one of Fuzzul Rubbee's nieces,*) where he met the prisoner; that he (Golam Sheikh) with his brother then went to prisoner's house at Tazpoor; that on ar-

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riving there, they found Kangalee Mussulman (the well known dacoit sirdar) who was then ostensibly in the service of Teenoo Meeah of Pandooah; that he (Golam Sheikh) remained a couple of days at the prisoner's house where he was fed and well-treated; and that he stopped at prisoner's while prisoner and the rest committed this dacoity. As I have said before, the statement by Golam Sheikh regarding his own share of the exploit must be received *cum grano*, for he was named as actively engaged in it by both the approvers, and punished as having been so, while there is no reason to doubt the truth of what he said *about others*.

2ndly. Kangalee Sirdar confessed to this dacoity on 3rd March, 1855, when he said Nussroo Meeah the prisoner (who had not then been apprehended) was an old friend of his and received the gang on their way to commit this dacoity at his house at Tazpoor; that the prisoner gave them his advice regarding the affair in hand; that the gang then proceeded to Russoolpoor and had a consultation there with Woozeer Meeah, prisoner's cousin, the prisoner joining them there from Tazpoor; that Woozeer Meeah supplied them with weapons; and he adds that Ekramul Huck was selected of two for attack on account of a difference that existed between him and Woozeer Meeah, prisoner's cousin, and a relation of the Teenoo Meeah, to whom this sirdar dacoit, Kangalee, was a servant. There is one point on which there is a discrepancy between Kangalee's confession and the statements of the approver witnesses. He says Nussroo Meeah remained at Russoolpoor while the dacoity was being committed. It is evident the two gangs moved about in detachments, and it is exceedingly probable the prisoner either kept aloof from the robbers on the march to the scene of the depredation, or was not seen by one party while with another. Kangalee is now undergoing transportation and cannot be examined as a witness.

3rdly. One of the four confessing prisoners punished for the offence with Golam Sheikh in 1847, named Adar Bagdee, said a "Mussulman," in all probability the prisoner, as his mode of transit is distinctly alluded to by all who have been examined in the matter, whose name he did not know, *accompanied the gang on horseback*.

4thly. The darogah in his report of this offence *dated 30th March*, 1847, says the prisoner was beyond a doubt concerned in planning and getting it up. He appeared before the magistrate after this, but was necessarily discharged, as there was then no evidence against him but that of a confessing accomplice. *Lastly and most especially* there is the corroborative evidence furnished by the prisoner himself and his witnesses, and to be gathered from all the surrounding circumstances of the case.

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Case of NUSSERUDIN AHMED *alias* NUSSROO MEEAH.

Teenoo Meeah, Kangalee sirdar's master, is connected with prisoner's family; and it is admitted Kangalee, a sirdar dacoit, and the prisoner were acquainted and occasionally met. Prisoner admits he was at Russoolpoor the night of the dacoity, having gone there the day but one before, "merely to see his brother," the witness Hamedoodeen No. 2. But this witness says his brother came to him on that occasion for the express purpose of getting from him (the witness) some deed he held for their joint interest; and he adds the dacoity at Chowghurreah was heard of early the next morning at Russoolpoor, *when the prisoner at once started on his return home to Tazpoor.* Russoolpoor from Chowghurreah is but a mile distant; no one can speak to prisoner's having kept in the house (of his relative Kadum Ali darogah) all that night; he might easily have been at both places during the night; and what a strange coincidence, 1st that prisoner should have happened to be that very night so near Chowghurreah, and 2ndly, that being there, so many persons should have implicated him falsely in the offence, without, *as far as the defence and the evidence for the defence goes*, any grounds or reason whatever!

Of the witnesses for the defence all are either low menials in the service of Kadum Ali, prisoner's relative, or his own connections; and although the latter speak well of his reputation, not one is able to show how prisoner *was not* at Chowghurreah concerned in the dacoity there on the night of 20th February, 1847.

I consider the 1st count fully proved against the prisoner; and considering the influence and example of a person in his position, and the violence which attended the dacoity, I sentence him to 14 years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with this conviction. The additional sessions judge has clearly set forth the grounds upon which he considers the evidence of the approvers to be corroborated. We consider that it has been corroborated in a remarkable degree; and we think it therefore quite trustworthy, both as to the occurrence of the dacoity charged and the prisoner's presence at it. Every person, who has confessed to having been engaged in the dacoity, has mentioned the presence, both of the approvers and of the prisoner now accused, and there is nothing to invalidate the testimony of the approvers but rather it is confirmed in all respects. We reject the appeal.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
HUBOOLLAH FUKEER.

Rungpore.

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Case of HUBOOLLAH FUKEER.

Prisoners convicted of burglary, &c. in concurrence with law officer of lower court. The discrepancies, &c. in the evidence were not such as to invalidate it.

CRIME CHARGED.—Burglary in the house of Meer Mahomed, and stealing therefrom property valued at ten annas.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bograh, Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 20th August, 1856.

Remarks by the sessions judge.—The prisoner is charged with having burglariously entered the house of Meer Mahomed, prosecutor, by cutting a hole in the wall thereof, and of stealing therefrom a *lota* valued at Co.'s Rs. 0-10-0.

The witnesses to the apprehension are the actual prosecutor Meer Mahomed himself, the chowkeedar of the village, and one Taj Mahomed Nusho who accompanied the chowkeedar on his rounds on the night in question.

No. 1, Meer Mahomed Nusho.

Meer Mohomed says he seized the prisoner in the house, but he wounded him in the arm, and escaped out of the hole made by him, where he was seized by the chowkeedar and Taj Mahomed.

No. 2, Mokeem Chowkeedar.
" 3, Taj Mahomed.

These witnesses say, that they saw Meer Mahomed and the prisoner struggling outside near the hole made, and the *lota* laying on the ground. Taj Mahomed in the foujdary court stated, he had seen them thus struggling inside the house. There is no satisfactory proof as to where, when and under what circumstances, the knife was found. The prosecutor himself is entered in the calendar as the sole witness to the finding of it. He states he heard that the jemadar found it.

No. 4, Shumsher Khooloo.
" 5, Gour Manjhee.

The witnesses to the *sooruthal* are two, but these both stated that the jemadar did not go to the spot at all, but that a burkundaz was sent who found the knife; mention of this latter circumstance is made by one of these only. I find in the darogah's reports no mention of the deputation of either jemadar or burkundaz. No description of the hole through which entrance was effected is to be found.

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There is indeed a map signed by the jemadar, but how prepared does not appear from the evidence, nor does this map agree with the description and situation of it given by the witnesses. One of the witnesses to the alleged *sooruthal* states, that the hole was cut in the western *tatty* like a doorway; other witnesses say that the wall was opened at the corner, and one of the *tatties* drawn aside so as to afford entrance. The evidence appears to me indeed, to be singularly unsatisfactory, the lapse of time can by no means account for the discrepancies in it. I can only conclude that the witnesses are not telling a true tale. They do not agree whether the prisoner admitted or confessed his guilt when seized. The manner of all the principal witnesses including the prosecutor tells, in my opinion, strongly against them. Though the prisoner has not been able to prove his statement of the circumstances under which he was seized, I cannot on such evidence convict. But as the law officer finds the prisoner guilty, the case must be referred for the orders of the superior Court.

Opinion of the sessions judge and the opinion of the law officer.

The police appear not to have thought the case of sufficient importance to render any local investigation by any competent police officer necessary, hence probably has resulted the unsatisfactory termination of this trial. The prisoner will remain as at present until the final orders of the Court are received.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) It is proved, beyond a doubt, by the evidence and by his own admission, that the prisoner was apprehended at 2 o'clock in the morning close to the prosecutor's house and that he went there with a knife in his hand.

The village in which the prisoner resides is three miles distant from the prosecutor's house.

His defence is, that he went at that hour for the purpose of begging contributions from the shop-keepers.

This, on the face of it, must be false.

The failure of the evidence regarding the finding of the knife does not, in the least degree, in our opinion, affect the proof of the prisoner's apprehension near the prosecutor's house at the untimely hour mentioned, or the distinct testimony of the prosecutor to his commission of the theft with which he is charged. There is no suspicion of enmity or of any improper motive on the part of the prosecutor.

The apparent inconsistency in the evidence regarding the description of the hole that was cut is easily accounted for. The corner of the hut may very well have been so cut as to resemble a door.

The other discrepancies pointed out are sufficiently explained by the length of time which elapsed between the commission of the crime and the trial in the sessions court.

Under these circumstances, we see no reason to distrust the evidence for the prosecution and concur with the law officer in convicting the prisoner of the crime with which he is charged; and, as he is an old offender, we sentence him to seven years' imprisonment with labor in irons.

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Case of HUBOOLLAH FUKEER.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

TRIAL NO. 5.

GOVERNMENT

versus

ASGUR ALIAS JAKER TURUFDAR (No. 12,) KETABDI MUNDUL (No. 13,) AND GOLUCK PATNEE (No. 14.)

TRIAL NO. 6.

GOVERNMENT AND KRISHTOMOHUN GHOSE

versus

ASGUR ALIAS JAKER TURUFDAR (No. 15,) KETABDI MUNDUL (No. 16,) GOLUCK PATNEE (No. 17,) AND NASER MUNDUL (No. 18.)

TRIAL NO. 7.

GOVERNMENT AND ROOPCHAND BARIK

versus

ASGUR ALIAS JAKER TURUFDAR (No. 19,) KETABDI MUNDUL (No. 20,) GOLUCK PATNEE (No. 21,) AND NASER MUNDUL (No. 22.)

Nuddea.

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September 18.

Case of JAKER TURUFDAR and others.

Prisoners acquitted of charge of dacoity, &c. The evidence was unworthy of credit. Remarks recorded for the use of magistrates in enquiries in such cases.

CRIME CHARGED.—*Trial No.* 5.—Dacoity in the shop of Petamber Ghose, attended with the assault and wounding of the said Petamber Ghose, in which property to the value of Rupees 17-10, was plundered.

Trial No. 6.—Dacoity in the shop of Krishtomohun Ghose, prosecutor, in which property to the value of Rs. 120-8, was plundered.

Trial No. 7.—Dacoity in the shop of Roopchand Barik, prosecutor, in which property to the value of Rs. 15-8, was plundered.

CRIME ESTABLISHED.—*Trials Nos.* 5 *to* 7.—Dacoity.

Committing Officer.—Mr. A. J. Elliot, magistrate of Nuddea.

Tried before Mr. R. M. Skinner, officiating sessions judge of Nuddea, on the 28th May, 1856.

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Case of JAKER TURUFDAR and others.

Remarks by the officiating sessions judge in trials Nos. 5 to 7.— On the morning of the 26th Aghun, the darogah received tidings of the occurrence of three dacoities on the previous night, from the chowkeedar of Goolungur Bazar, who deposed that he was sitting in the *verandah* of Kali Koond's shop in the Bazar of Goolungur when certain persons came through the passage between the shops of Moish and Ramdhun Munduls 1½ A. M. speaking like bearers; they lighted two or three torches and pulled at the *jhamp* of Petamber Ghose's shop, calling out that the darogah had come. They passed into the house, chowkeedar called out and jumped down from the *verandah* of Kali Koond's. Prisoners Asgur and Ketoo and Baheree rushed forward, calling "*choop*" and tied his hands behind his back with his own cloth and left him under a tree in charge of a fourth person, whom he did not know and who had in his hand a pointed bamboo. The rest of the persons plundered Petamber Ghose's house. The plunderers then went to Kishen Ghose's shop, opened the *jhamp*, went* in and *looted*, thence to Roopchand's shop, and plundered; went to the east of the bazar and *put out torches* and ran off eastward. Identified Ketabdee Mundul, prisoner, Naser Mundul, Goluck Patnee, Azgur prisoners and others on their way to Kishen Ghose's for Petamber's, witness Zumeer Mistree came from Kali Koond's and released Chowkeedar Panchkory from bonds. Saw wounds on foot and body of Petamber Ghose, who told him that he had recognised Kitab and Goluck. Kishen Ghose was also struck with a stick, a box was carried off from Roopchand's. He also heard from Baker and Zameer Chowkeedars that they had recognized some persons whose names they (witnesses) would not at that time proclaim.

Witness in calendar No. 6.

* Plaintiff in calendar No. 7.

Plaintiff in calendar No. 8.

The darogah proceeded to the spot with the mohurrir, and took the deposition of Petamber Ghose and made *sooruthal* of the plunder of the shops of Petamber Ghose, Kristomohun Ghose and Roopchand, and of the wounds of Petamber Ghose and of Kishto Ghose on 26th Aghun. Kishto Ghose and Roopchand said they identified no one.

Petamber Ghose deposed that he recognised Ketab and Goluck and gave other particulars of the occurrence.

Zumeer Mistree mentioned Naser, Ketab and others.

Nobogazee named Goluck and Ketab.

Soobed Mundul named Ketab, Goluck and others.

Baker Chowkeedar mentioned Naser and Ketab.

Zumeer Chowkeedar mentioned Goluck and others, as recognised by them.

The next day (27th Aghun) the darogah took depositions of Kishto Ghose and Roopchand, plaintiffs.

On 28th the darogah searched the houses of five persons, viz.

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Asgur, Goluck and three others, named by the witnesses, and the following day apprehended Asgur and Goluck, the former confessed that he was in the habit of seeing Ketabdee, Naser and others. The night before the dacoity, Ketabdee told him to accompany him to commit dacoity in Goolungur Bazar; that he accompanied the dacoits in their expedition to the shops of Petamber Ghose, Kishto Ghose and Roopchand; that they afterwards went to his father-in-law Zaker's with their plunder, and thence to Goluck Dutt's where they deposited the plunder; he named Ketabdee, Naser, Goluck and others. On 1st Pous, Ketabdee and Naser were apprehended.

Asgur on 1st Pous confessed again before the deputy magistrate of Kolaroa, in calendar No. 6.

The crime is proved against Asgur, Ketabdee and Goluck from the evidence of Panchkory, Petamber and Nobogazee and the confessions of Asgur.

The crime charged in calendar No. 7 is proved against Naser, as well as Asgur, Ketabdee and Goluck by the evidence of Panchkory, Zumeer Mistree, Zumeer Chowkeedar, Nobogazee, Soobed Mundul and Petamber Ghose as well as the confession of Asgur.

Calender No. 8. In this also the charge is proved against all four prisoners by the evidence of the abovenamed witnesses and of Baker Chowkeedar, added to the confession of Asgur.

The evidence for the defence by no means clears any of the prisoners.

I convict Asgur, Ketabdee and Goluck of committing dacoity in the shops of Petamber Ghose, Krishto Mohun Ghose and Roopchand Barik and sentence each of them to seven years' imprisonment with labor in irons, consolidated penalty.

I also convict Naser of committing dacoity in the shops of Krishto Mohun Ghose and Roopchand Barik and sentence him to be imprisoned for seven years with labor and irons, consolidated penalty.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) This dacoity occurred on the night of the 10th of December. Information was given to the deputy magistrate of Kalarooa (Baboo Govindchunder Bose,) on the 11th by the zemindar's gomashtah, but nothing was said by the gomashtah of any of the dacoits having been recognised. It was not until the 13th, that the report of the Kaguzpokarrea darogah, dated the 11th, reached Kalarooa. The delay in transmitting this report must have been wilful, as the thannah is only a few hours journey from the station, and there is no reason why the darogah, who says the chowkeedar's report was made to him at 10 o'clock on the morning of the 11th, should not have conveyed intimation of it to the deputy magistrate on the same day if he had been so minded. We observe that se-

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veral of the subsequent reports also reached the deputy magistrate some days after the date they bore.

The chowkeedar Panchkory and one of the plaintiffs, Petamber Ghose, are said to have deposed on the 11th to the recognition of the prisoners and others, but it is not until the 13th, that the houses of any of these persons are searched, and none of them are apprehended until the 14th, though they all live within easy distances of the spot where the dacoity occurred. It is not stated in the darogah's reports that any of them had absconded; and no explanation, so far as we see, is given of the cause of delay or of the reasons for searching the prisoners' houses before their apprehension. Asgur is said to have admitted to the darogah that he was present at the dacoity, though he denied having taken any active part in it; and he made a confession of the same sort before the deputy magistrate. The other prisoners are said to have been recognised some by the plaintiff and some by the witnesses. One of these witnesses Zumeer Mistree was originally made a defendant, and only mentioned his having recognised the prisoners in the hope, as the darogah himself states, of being released, and received as a witness. The prisoners reside in the neighbourhood and are well known to the witnesses. Two of them live only a few yards from the plaintiff, Petumber Ghose, yet they are said to have used no disguise and to have exhibited themselves freely to their acquaintances by the light of the *mussals* which they carried. Only one of them appears to be a man of bad character and not a scrap of property was found upon any of them, though the things stolen included cloth and other articles peculiarly difficult of concealment. Asgur Ali, in order to account for being unable to produce the property, or to give any clue to it says, he received no share of the plunder, which, if his statement of being present at the dacoity were true, is very improbable. Suspicious and unsatisfactory as the case was, the judge has wholly omitted to submit the witnesses' statements to the ordinary test of cross-examination.

We disbelieve the evidence; and regard the confession of Asgur Ali, as one of those half and half-admissions which an ignorant and timid man may easily be induced to make by the threats or promises of the darogah.

Confessions are of litte value in this country, unless they lead to the production of the property stolen; or failing that, are corroborated by circumstantial evidence. Here there is no corroboration whatsoever; and the whole presumption of the case are against the truth of the confession.

Evidence of recognition in dacoities should be very cautiously received, and should never be relied on, unless it accords strictly with the probabilities of the case. Experience has shown us that when persons who have been robbed, fail to obtain a clue to

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the real perpetrators of the robbery, they are in many cases, but too ready to accuse those to whom they bear a grudge, or who may be indicated to them by the police as the probable culprits: and the form, which the evidence necessary to support these false accusations most readily takes, is, that of evidence to recognition, because it presents few points assailable in cross-examination, and can only be met on the part of the prisoner by the plea of an *alibi*, which is generally regarded by the courts with suspicion. But we know from the revelations of the dacoit approvers, and from our own experience as magistrates that there is nothing against which dacoits so carefully guard as the risk of recognition. It is very rarely indeed that they attack a house in their own neighbourhood, and when they do so, they disguise themselves and place those most likely to be known in the back ground; instances, indeed, are not rare of their cutting off the head of a comrade who has been killed, or disabled, and carrying it away with them in order to prevent the probability of recognition. Where, then, as in this case, some four or five witnesses swear to an equal number of their neighbours committing a dacoity in their village without attempt at disguise or concealment, and their statements receive no corroboration, either from the discovery of stolen property in the possession of the accused or from independent sources, it may safely be concluded that their statements are false.

We fear that there is a tendency on the part of young magistrates and deputy magistrates to receive the evidence which their police choose to submit in cases of dacoity, without sufficient scrutiny, and to leave it to the superior Courts, to test its worth. This probably arises from the extreme difficulty of obtaining satisfactory proof in these cases, and from a fear of discouraging the police. But that it is a very grave error, and conduces to the demoralization of the police, there can be no doubt When the police feel that their proceedings will not be closely looked into, they are very likely to save themselves trouble, by concocting confessions and evidence to recognition, instead of taking pains to trace the dacoits with the property they have stolen, and to search out all the links which are necessary to complete the chain of evidence against the guilty parties. It is only when they see that the magistrate refuses to receive weak evidence, rejects unsupported confessions, and calls them to account for all questionable proceedings, that the majority of them will really exert themselves. A good magistrate will examine with care every report of his darogah, in cases of dacoity as it is received, will hold them responsible for the regular transmission of the diary enjoined by the Circular of the late superintendent of police, No. 19, of the 14th August, 1843, and will enquire into every instance of delay in the receipt of reports and every suspicious act on the part of the police, which

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he may observe. Information of the dacoity with all the details which the chowkeedars or other informant can furnish, should invariably be forwarded by the quickest conveyance at the darogah's command, within two hours of its reaching the thannah; the evidence of the prosecutor and the witnesses, and the answers of the accused should likewise be taken as soon as practicable, and forwarded on the same day, in which they are written, or at latest on the succeeding morning; and no more time than is absolutely necessary should be suffered to elapse between the information against the accused, their arrest (when they have not absconded) and the search of their houses; when any delay occurs, it should be fully accounted for, and the darogah should, if necessary, be made a witness in order that he may explain it. Confessing prisoners also should be examined by the magistrate with some minuteness as to their knowledge of the locality, where the dacoity occurred, the precise particulars of the dacoity itself, the disposal of the stolen property, and the promises, which the darogah may have held out to them of being released or made witnesses. If these points are not strictly attended to, great scope is afforded to the police for manufacturing evidence, and confessions; and when the case goes before the superior courts, it is necessarily felt to be unsatisfactory; the suspicion at once arises that the police have been tampering with the evidence, and the prosecution very probably fails. Magistrates who are desirous that their committals should stand the ordeal of the sessions and sudder Court, must therefore be careful that the rules laid down for the conduct of enquiries by the police* are strictly adhered to; that the darogahs are not allowed to accumulate depositions, or answers, or to delay taking them, or acting upon them, when taken, and that confessions and evidence to recognition are corroborated, as far as possible, by independent testimony. We direct that a copy of these remarks be furnished to the deputy magistrate of Kalarooa for his information and guidance.

We acquit the prisoners, and direct their immediate release.

* C. O. Sudder Nizamut 16th June, 1843.
Supdt. Police Circular 4th August, 1843.
" " 6th of 1853.
" " 10th of 1846.

PRESENT:

B J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GURUCHURN KOOMAR,

versus

PAHAR SINGH (No. 1,) DOYAL ALIAS DOYANIDHEE (No. 2,) HARROO (No. 3,) HURREE (No. 4,) GOURHURREE (No. 5,) AND PUHLAD (No. 6.)

Chota Nagpore.

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Case of PAHAR SINGH and others.

The prisoner convicted of being an accomplice in wilful murder was sentenced to transportation for life.

CRIME CHARGED.—Nos. 1, 2 and 3, wilful murder of Musst. Toolsee, on the 10th March, 1856; Nos. 4, 5 and 6, accessary before and after the fact in the above murder.

Committing Officer.—Capt. J. S. Davies, senior assistant commissioner of Chyebassa, Chota Nagpore.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 14th June, 1856.

Remarks by the deputy commissioner.—The prosecutor states that his step-mother, Toolsee, had for a long time past resided in the house of one Bhagirathi Koomar, her son-in-law. Two days before the end of the month of Falgoon last, in the early morning, prosecutor found her lying dead in his "*dheksal,*"* with several marks of violence on the body. Prosecutor having told Doyal, his relative, to let the villagers know what had happened, went himself to give information to the rural police officers at Parihati village, but on the way was recalled by the prisoner, Pahar Singh, who said that the villagers had summoned him. Prosecutor returned accordingly, but found no one in the village. Pahar Singh then said he had been sent by Dhani Koomar, who had gone he knew not whither. Prosecutor again went and informed the rural police officers, and told them that the villagers had charged the deceased with witchcraft, and had conspired to kill her. When the darogah came, Doyal's wife, Sahachori, stated that Doyal and Pahar Singh and Harroo Behara and Gourhurree and Hurree and Puhlad and Hara, had seized and had murdered the deceased; Doyal said that he had seen Pahar Singh and others commit the murder; and Pahar Singh said that Doyal had brought him to see the murder done, and that he did see it committed by Harroo Behara and others. Deceased was very old.

The prisoners plead *not guilty.*

No. 8, Makra Santal states, that on a Monday evening in Falgoon, he saw the deceased, Toolsee, going towards the jungle followed at a short distance by the prisoner, Pahar Singh. On

* The apartment in which rice is cleaned from the husk.

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the next day, the darogah came and witness saw the body of the deceased.

No. 9, Josodah states, that one evening, she saw the prisoner, Pahar Singh, followed by the deceased, Toolsee, going by a bye-path towards the jungle. Pahar Singh had an axe or hatchet with him, witness was at a little distance and did not speak to them. Next day witness heard of the murder. The villagers called Toolsee a witch. Witness thought her well behaved, and used to sleep in her dwelling. Sonatun Behara exorcised one Arun Napit; Sonatun practises exorcism.

No. 11, Sahachori states, that her husband, Doyal, one day called the deceased, Toolsee, and told her to go and hear a book read at Dumuria in some one's house, witness does not know in whose. The old woman went alone, and returned alone in the evening, and when she reached the *dighee* pond, she was seized by Harroo Behara, Gourhurree, Puhlad, Pahar Singh and Hurree and the witness's husband, who took her to the jungle, by what way, witness does not know. When the night was somewhat advanced, Doyal came home and told witness that they had beaten the old woman to death. He then ate some food and went out, taking with him a stone and a staff, Pahar Singh had taken with him a pole and slings. The old woman had bewitched Harroo Behara's child and Dhani Behara's child, therefore they all killed her and are happy to have done so. People say she bewitched the witness's uncle's mother-in-law. Witness and her husband are on good terms, she gives evidence of her own accord Deceased was witness's grandmother-in-law. The pond is about twenty or twenty-five paces from witness's house. Witness has a co-wife, who lives at Holdi Pokhor.

No. 12, Bhagirathi states, that one evening, when witness was quitting his house to go to Dakhinasol, Doyal came and called witness's mother-in-law to hear a book read. She went with him, witness went to Dakhinasol and could not return that night. Next day he heard of the murder. Witness was himself accused of the murder.

The confession of the prisoner Pahar Singh, before the police is to the effect that above a month ago he and others had a consultation at which they resolved to murder Toolsee, and that seven days since, Doyanidhee (Doyal,) told him to come for that Harroo and others, four persons, had gone to kill her. On the way, Doyal gave prisoner a rupee saying. You must not tell any one of this? Prisoner has given this rupee to the police. They too went into the jungle south of the village, and there at ten yards distance saw Toolsee beaten and murdered by Gour Behara and Puhlad, and Harroo, while Hurree sat by. All then agreed that the body must be put into Guruchurn's house. They came home and later at night, prisoner was called by Doyal, and went with him and others, and saw, but did not assist in the

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bringing of the body to Guruchurn's house. They told prisoner to keep watch, which he did.

The confession of this prisoner before the assistant commissioner of Singbhoom is of similar purport.

These confessions are duly attested by the subscribing witnesses.*

* No. 1, Buksoo Digwar.
" 4, Dhurnee Mahaty.
" 5, Juggurnath Doss.
" 7, Myaram Chuprasee.

The record of the inquest shows, that the deceased had been cruelly beaten to death.

The prisoner, Pahar Singh, in his defence says that, if he had been guilty of the murder, the prisoner, Harroo Behara would not have given him a rupee to induce him not to name that prisoner. The statement made by the prisoner before the assistant is correct.

A witness† named by the prisoner Pahar Singh states nothing in his defence.

† No. 18, Ramperahad.

The jury named below* found the prisoners, Pahar Singh and Doyal Koomar guilty as accomplices in wilful murder.

I consider that the evidence against the prisoner Pahar Singh justifies this verdict as to him. He was seen by two witnesses going towards the jungle with the deceased on the evening of the murder. The prisoner has confessed that he with others conspired to commit the murder, and that he was present during the whole transaction. The circumstance also of his having called back the prosecutor is not wholly insignificant.

To the evidence of the witness, Sahachori, I can attach no credit, and there is no other sufficient evidence to convict the prisoner, Doyal.

Against the other pri-oners there is no evidence.

I find the prisoner Pahar Singh guilty of being accomplice in wilful murder and recommend that he be sentenced to imprisonment for life, with hard labor in irons in transportation.

The other prisoners have been acquitted and discharged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur with the deputy commissioner in convicting the prisoner of being an accomplice in wilful murder and sentence him, as recommended, to transportation for life.

* Ramkanie Roy, mookhtear.
Lalla Gujraj Singh, ditto.
Ukhory Injoylal, ditto.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT, BIRJOSOONDERY AND ANOO CHOOCREE

versus

PITAMBER SURKAR (No. 1,) AND HAURIA SHAH (No. 2.)

Rajshahye.

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Case of PITAMBER SURKAR and another.

Of two accomplices in wilful murder, one was sentenced capitally while the other was sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Ram Shah by wounding him with a *dao*, of which wound the said Ram Shah died after nearly twelve hours.

Committing Officer.—Baboo Gopal Loll Mitter, deputy magistrate of Nattore, Rajshahye.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 1st August, 1856.

Remarks by the officiating sessions judge.—The prisoners are charged with the wilful murder of Ram Shah, a shop-keeper of Mohungunge.

There is no eye-witness to the act which was committed in the dead of night, while the unfortunate deceased was asleep, and in the dark.

One severe blow from a cutting instrument awoke him; the assailant immediately disappeared, and the murdered man who survived about twelve hours, was unable, in his dying deposition, to indicate any one as his probable assassin.

Circumstances however led to the apprehension of the prisoners, who made confessions neither directly admitting actual murder, which each put upon the other, but concurring in the admission that one knew what the other was about to do; and the prisoner No. 2, describing in detail the overtures made by prisoner No. 1, to induce him to enter into the business.

The facts in evidence are these; the prisoner Hauria, or Haroo Shah, was the paramour of a common courtezan named Soormee, or Soormonee (witness No. 13,) and by way of help to him to set up a small shop borrowed from her a silver bânk which he pawned to the deceased Ram Shah, for six rupees in Kartick last. She afterwards herself pawned with Ram Shah, a gold *nuth* for rupees 2-8. Time went on, and the woman becoming impatient for her ornaments, urged Hauria to redeem them. Hauria was seen by Matam chowkeedar witness No. 14, in altercation with Ram Shah, on the subject; he, it seems, wishing to reclaim the articles on payment of the sum advanced, while the deceased refused to give up the articles without interest.

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Towards morning on the night of the 21st, 22nd of June last, the neighbours were roused by outcries, and some persons sleeping in the shop of Issur Pal, which is immediately opposite that of Ram Shah, were called by the prisoner Hauria, who was also in Issur Pal's employ and slept in the same shop. He told them that Ram Shah was wounded on which one of them, witness No. 9, Haradhun Pal, went and saw Ram Shah bleeding profusely from a wound on his neck; the neighbours assembled, but Ram could give no further account of the matter, and Haradhun returned to the shop; next morning he found and made over to the chowkeedar a *dao*, which he identifies as belonging to Hauria and which, he says, was in that part of the shop where Hauria had slept; he says that he did not observe at the moment of giving it to the chowkeedar whether it was stained with blood or not, but that his attention was afterwards called to it that day by the mohurrir who was making the enquiry. The chowkeedar who received the *dao* from witness is not present, or, in the calendar; the *dao* produced in court has several stains of blood upon the blade.

The witness also says that he did not see any thing remarkable in Hauria's demeanour when he called them up, but as it was dark he had not the means of observing, and he probably did not trouble himself about the matter.

This evidence is to a great extent confirmed by the witness No. 10, Kartick Surkar who was also an inmate of Issur Pal's premises, and was disturbed on the occasion.

Undoubtedly these facts would not be sufficient for conviction if they were not supported very powerfully by the admissions of the prisoner Hauria himself, which considered along with the confession of his fellow-prisoner Pitamber, I think are quite conclusive. I subjoin pretty literal translations of the statements made by both before the darogah, which statements, it will be seen, they have confirmed with only verbal differences before the deputy magistrate.

Pitamber Surkar's mofussil confession.—I had been used to go to Rajkoomari, had a quarrel and left her for Soormee; Hauria also had to do with her, and quarrelled with her about me; afterwards he agreed we should both go. Sometime after he told me that he had pledged some things of Soormee's to get up a shop; that on account of those ornaments she beat and bit him; so he proposed to kill Ram Shah and recover the things and asked me to join him. He said this to me one night in Bysack at Soormee's, I refused; no one was by. After that I left Soormee and began again going to Rajkoomari; last Friday morning at day-light I had gone to river-side to ease myself, and Hauria Shah also went; met him, we began talking, and at last he said, To-night I intend to kill Ram Shah and take the things, you be with me; I said, I could not, if he could

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he might; that night I was sleeping at Rajkoomari's; that night I did not see Hauria; next day Saturday evening about six *dundas* after eating I had gone to Rajkoomari's and was eating *pawn;* a little after that I went to my uncle's Nityanund Naib's lodging, getting under the mat I went to sleep; about one *prohur* remaining, Hauria entered the house, took my hand, and roused me, said softly he had something to say; I went out with him; he left me there, went to his shop, brought out a hand *dao*, put it in my hand, and told me to strike Ram Shah in the neck with it. I gave him back the *dao* and told him I could not, and would go back to sleep; he told me to stand there and he would go; he accordingly went and cut the lower string of the *jhamp* of Ram witness's shop, passed inside, I stood by in the *verandah* looking on; a little after, I heard a noise as of a hand falling on a bolster, presently Ram called out, "What has happened to me." Hauria came out, gave me a slap and went away with the *dao;* I went home, heard Ram Shah alling out; there was moonlight enough to see him go into the house, I was about five cubits off; there was no light in Ram Shah's house, I know the *dao* from before to be Hauria's. He had told me not to say any thing and he promised to give me something if he got anything. My uncle is the *ijardar's* naib, I collect the bazar-rents.

Hauria Shah's Mofussil confession.—Last Saturday night Pitamber Surkar knocked at the *jhamp* of Issur Pal, my master's shop. I thought it was a jackal and did not get up. I warned him off and went to sleep. One *prohur* of the night remaining, he came again and knocked, ready to break the *jhamp*. I woke up, there were Harradhun and others sleeping there. I called them up, but they were fast asleep and did not rise; then I took an implement for water, opened the *jhamp* and came out, saw Pitamber standing with a *hat dao* in his hand, came to me and said come, I am going to kill Ram Shah and bring away all he has. I said, Ram Shah is a relative of mine, same caste, why should I go and kill him, what have you called me for—I said so and sat down to make water at the foot of a tree. Pitamber went to Ram Shah and either cutting or pulling open the cord, the *jhamp* gave way, so he got in. I observed this as I had done making water and was about to go back into the house. I then heard a sound like a blow struck on a plantain tree, on which Ram called out "I am a dead man," and Pitamber came out with the *dao*. I said to him, Pitamber, You have committed a dacoity. He said, I will cut you in two, what are you talking for? I was afraid and went into the shop. He went away east to his lodging. I did not see whether the *dao* was bloody or not; Ram Shah made an outcry, people came, the naib called me, I took the people with me and went to Ram Shah's *verandah*, and as there was a light in my shop, Bhoobun

took a light, I saw Ram Shah's wound and blood flowing. I did not pledge any part of Soormee's property. She pledged both articles herself and brought me 8½ rupees and never proposed to Pitamber to kill Ram, &c.; he used to go to Soormee during my illness before or after *Dole jattra;* I heard of it and found fault with Soormee, after which she saw Pitamber no more, for that reason Pitamber constantly abused me and on that account he has killed Ram Shah himself and then put the blame on me; I never had any altercation with Ram about Soormee's things, I did not make an outcry, lest Pitamber should strike me after he had left Ram Shah; besides that, his uncle the naib might trouble me, and also I owe him 12 annas.

Pitamber Surkar's confession before the deputy magistrate.—I began to go to Soormee's, on hearing of this, her paramour Hauria, who is a servant of Issur Pal, a shop-keeper of that bazar, quarrelled with her; for all that, I continued going, Hauria at last said, You cannot give each other up, let us both go there, and let none of the *milki* people go, which we did; Soormee had an ornament pawned at Ram Shah's. She had to worry Hauria about redeeming it. One day last Bysack sitting at the *nuttee's*, Hauria said to me, See, she is always at me for this ornament, join me in cutting Ram Shah's throat and bring Soormee her things; I said, I cannot do any thing of the kind. Some days after, I left Soormee and went back to Rajkoomari, and did not go to Soormee's any more. Again on Friday, he tempted me, and said he would do it that night; again I refused and went home. Next day, Saturday night after having been at Rajkoomari's I went to my own lodging and lay down. One *prohur* remaining Harroo Shah came to me and roused me and said, Come, hear a word; I got up and went to him. He placed me in the road between Issur Pal's and Ram Shah's houses and said, Wait till I come from my master's. Then he brought out a small *dao*, told me to smite Ram Shah on the neck with it putting it in my hand, I refused and gave it back to him. Then he said, Don't go, I will go, and do it myself, wait here.

I heard a sound of a knock and directly afterwards Ram Shah called out, "What has come to me?" Hauria sprung out. I returned home. Hauria went into his master's shop. Next day, Hauria said to me, Take care, don't say any thing of this; if you do I am gone, and you too. I never cut Ram Shah's throat myself.

Hauria Shah's confession before the deputy magistrate.—As in mofussil—I heard a noise as if Pitamber had struck Ram Shah, on which I concluded that Pitamber had struck Ram Shah a blow with the *dao*, then Ram began to call out "I'm killed, I'm killed," then Pitamber came out with the *dao*, I said, What have you done? and he went away with the *dao* in his hand; people questioned Ram Shah, who said he had been wounded in his

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sleep and begged his box might be looked at. He declared to the *buxi* that he had no particular enmity with any one.

The manner of recording these confessions has been very satisfactorily attested by the subscribing witnesses, and although the prisoner Pitamber *now* speaks of having been maltreated by the darogah, there is not a particle of proof or even ground for suspicion of such a proceeding, and the prisoner's own position as nephew to the zemindar's naib with whom he lived would have certainly protected him from any such usage; besides that, the Nattore darogah who enquired into the case, bears a good character, and is not likely to have sanctioned measures of the kind.

Pitamber, who is known to have been a young man of loose habits, and to have been, as he says, an occasional gallant of the woman Soormee, is not implicated otherwise than by his own confession, which, however, for the reasons given above I consider entitled to all credit.

The statement it will be seen, admits far more of the previous circumstances than that of Hauria; it accords well with the circumstantial evidence, and throws a most important light upon Hauria's confession.

In this court both plead *not guilty*, Pitamber called four witnesses to his defence of whom only the chowkeedar positively declares that he saw the prisoner asleep at his own lodging about the time of the murder, having previously sought him in vain at the houses of the two prostitutes with whom he associated; the coincidence is rather remarkable and as the witness is unable to give any satisfactory reason for having made so particular a search for the prisoner on the night in question, and considering the relative situations of the witness and of the prisoner's uncle in the same village, there can be no difficulty as to the conclusion that the story is false. His other witnesses prove nothing.

Hauria called seventeen witnesses of whom nine were to establish the fact of enmity between himself and Pitamber and eight speak to his character. The whole of the nine profess entire ignorance of the matters pleaded; and of the eight witnesses to character not one speaks positively in his favor (though some of them are of his own caste) while several say that he is looked on with suspicion.

The circumstantial evidence indeed is scanty, but, connected as it is with the prisoner's confessions, it affords ample matter for a conclusion.

The law officer, who sat with me on the trial, convicts Hauria on violent presumption of the murder and Pitamber similarly as an accomplice (I should have said aiding and abetting,) and declares both liable to punishment (by *akoobut*) extending to their lives. In this verdict I fully concur, and I think that

justice demands a capital sentence in the case of Hauria, but for Pitamber I should propose a sentence of transportation for life.

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Case of PITAMBER SURKAR and another.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) Upon due consideration of this case, we concur in the view taken by the officiating sessions judge. There can be no doubt from the prisoners' confessions of their common guilt, and both are liable to the penalty of death. But as the deceased received only one wound, which could have been dealt by only one of the two, it is important to consider by whom it was probably struck. Every thing supports the presumption that Hauria was the murderer. He had the greatest interest in the death of the deceased, and the *dao* used on the occasion was either his, or at his command, whenever he chose. It was found also on the premises that he frequented.

The prisoner, Pitamber Sirkar clearly assented to the murder, and watched while it was being perpetrated, thereby giving confidence to his associate during its commission. Under the above circumstances we sentence prisoner No. 1, to transportation for life and prisoner No. 2, to death.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND RAMDYAL SURNOKAR

versus

DOOLUBB DOME.

Beerbhoom.

1856.

September 18.

Case of DOOLUBB DOME.

Prisoner acquitted on appeal on account of the great improbabilities of the case.

CRIME CHARGED.—1st count, receiving stolen property knowing the same to have been obtained by committing a dacoity in the house of Ramdyal Surnokar, plaintiff; 2nd count, privity to the abovementioned dacoity.

CRIME ESTABLISHED.—Possessing property acquired by dacoity.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 10th July, 1856.

Remarks by the sessions judge.—On referring to case No. 4, of May, 1856, it will be seen that the defendant in it was acquitted for want of evidence.

Since then the party robbed has been endeavouring to discover some traces of his property; his suspicions were raised against the present defendant, and at his request his house was searched;

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nothing was found in the house itself, but at the instance of the darogah, an old dirty sleeping quilt, lying in the court, under the wall, was taken up and shaken, when a broken silver anklet and some other pieces of silver, No. 1, the property of the plaintiff, and No. 2, some that had been given him to make up, fell out, having been rolled up in it.

Witnesses Nos. 7 and 8.

Witness No. 6.

The defendant can make no defence, except that it had been put there by the plaintiff, or the police, and the man has a fair character given him by his witnesses, who also say that he was threatened by plaintiff.

Witnesses Nos. 10, 11, 12, 13 and 14.

I found that after the house was searched, when the quilt was first taken up, the prisoner tried to deter the man that did so, by saying that a person had died upon it and that it had ordure upon it; it is true it was near a broken part of the wall, but it is described as three cubits high, so that though a person might have dropped any thing over the wall, he could not have rolled up any thing in the quilt, nor would a native of this country have touched a thing of the sort defiled with ordure, unless it was his own, the prisoner is one of the chowkeedars of the village, and though frequently called for on the night of the dacoity, did not appear, as the magistrate says in his abstract, "I think it probable that the property found was given the man to secure his silence."

Witnesses Nos. 1, 2 and 3.

There are some slight discrepancies in the evidence, for instance, the plaintiff says that he recovered the silver from witness No. 6, with three rupees in addition, and witness No. 6, says he gave only the silver, and there is some confusion in the evidence of another as to how suspicion was first raised against the prisoner, but they do not affect the facts of the case.

I therefore found him guilty of possessing property acquired by dacoity, and sentence to seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) On the 9th February, 1856, a dacoity was committed in the house of Ramdyal Surnokar.

On the 8th April following, on the suspicion and at the request of Ramkissen Surnokar, the prosecutor's brother, the prisoner's house was searched.

Nothing was found in the house, but, as the judge correctly states, "At the instance of the darogah, an old dirty sleeping quilt lying in the court, under the wall was taken up and shaken" and out dropped a broken silver anklet belonging to the prosecutor, which had been plundered in the dacoity.

It is most improbable that a chowkeedar of the same village,

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in which the dacoity was committed should have kept the stolen article so long after the commission of the dacoity, and should have finally placed it where it was found.

The judge states that no one would "have rolled up any thing in the quilt, nor would a native of this country have touched a thing of the sort defiled with ordure unless it was his own."

We see no reason why men of the same low caste as the prisoner should be deterred from doing this, and we observe that the man who shook the quilt at the darogah's bidding was one Rajkissore Dome, a chowkeedar, who, as he could *touch* the quilt, might possibly have *rolled it* up with the broken anklet in it.

There was indeed opportunity sufficient, while the search was going on *inside* the house, for any one *outside* who could touch the quilt, to secrete the stolen article in it.

The judge has, moreover, alluded to discrepancies in one part and confusion in another part of the evidence, and the prisoner, we observe, is said to have borne a good character.

Taking these facts into consideration along with the improbability of the stolen article being kept so long after the commission of the dacoity by a chowkeedar of the village, in which it was committed, and the possibility of some other person having had a hand in secreting it where it was found, we have no hesitation in acquitting the prisoner and direct his immediate release.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND RAJKISTO BUNDOPADHIA

versus

MOOKTAH BAMNEE (No. 1,) ADOOREE RAUR (No. 2,) AND KALLACHAND MANNAH (No. 3.)

24-Pergunnahs.

1856.

September 18.

Case of MOOKTAH BAMNEE and others.

Conviction of certain prisoners of theft, &c. upheld: the privity of another not being proved, he was released on appeal.

CRIME CHARGED.—No. 1, theft of her master's property to the value of Rs. 2,253. No. 2, 1st count, accessary after the fact of the said theft; 2nd count, privity to the said theft; 3rd count, receiving property obtained by the said theft, knowing that it had been so obtained. No. 3, 1st count, accessary after the fact of the said theft; 2nd count, privity to the said theft.

CRIME ESTABLISHED.—No. 1, theft of her master's property valued at Rs. 2,253; No. 2, accessaryship after the fact, privity to it, and receiving part of the stolen property knowing it to have been stolen; No. 3, privity to the said theft.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, officiating additional sessions judge of 24-Pergunnahs on the 28th March, 1856.

Remarks by the additional sessions judge.—Prosecutor is a gold smith at Kidderpore. Some days before the 19th December last, his khansamah, one Poornoo, got leave to go home. On 19th December, the prisoner, Mooktah, who was prosecutor's cook, also went away on leave for a few days. Two days after she left, the prosecutor on opening his iron safe discovered he had been robbed of gold and silver ornaments and gold mohurs to the value of Rs. 2,253, and immediately suspected his two absent servants, who, he found, had had a liaison. Prosecutor went in search of the female prisoner to her uncle's at Soorsoona, to whose house she had expressed her intention of going, but could neither find her there nor at another relative's at Arpooli. He then, on 24th December, applied to the police, naming as the persons he suspected the prisoner Mooktah, the abovementioned Poornoo and Poornoo's brother, the third prisoner, who it had been ascertained (witness No. 15,) met the first prisoner on the road by appointment the day she left prosecutor's. The police could do nothing, and prosecutor next offered a reward, which produced Ramdhun Chuckerbutty, witness No. 16, who tendered his services. Through him, the prisoners were eventually apprehended and property to the value of Rs. 1,390, recovered. It appears the prisoner Mooktah, got the key of her master's iron safe from a small box, while her mistress was from home, rifled it of its valuable contents and went with the pro-

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perty to a brothel in Calcutta, kept by the second prisoner, who assisted her in making away with the greater part of the spoil, and getting all of it liable to lead to detection, melted down by one Neelmoney Sonar, who was entered as a witness in the calendar, but whose evidence in the lower court, not being indispensable, I ordered to be expunged; desiring the magistrate to transfer his name in the calendar from amongst the witnesses to the prisoner's column. (This order has been cancelled as illegal after reference to Sudder.)

The prisoners, Mooktah and Adooree, Nos. 1 and 2, deny the charge against them in my court; but they made a free and full confession before the magistrate (witnesses Nos. 3, 4, 5 and 6,) and the evidence against them is otherwise irresistible. The evidence against the third prisoner, who has not confessed, proves his privity only. He and his brother, Poornoo, joined the prisoner Mooktah, at the brothel and lived there with her, (witnesses Nos. 17 and 18,) but there is no proof that the prisoner ever had in his possession any portion of the stolen property or ever in any way benefited by the disposal of it.

I have tried this case with a jury. They convict the prisoner, Mooktah, of the theft of her master's property to the value of Rs. 2,253, and in accordance with that verdict, I sentence her to seven years' imprisonment with labor suited to her sex. The jury further convict the second prisoner, Adooree, of accessaryship after the fact, privity, and of having received part of the stolen property, well knowing it to have been stolen, and in full accordance with that verdict, I sentence *her* to imprisonment with labor for three years. We acquit the third prisoner of the charge of being accessary after the fact, but convict him of the lesser offence of privity; and he will be imprisoned for six months with labor commutable to a fine of 20 Rs. if paid in ten days. All the property found, whether with the prisoner, Adooree, or with the witness, Neelmoney, (and which no one has claimed as his own,) will be restored to the prosecutor, minus 10 per cent. he has undertaken to pay to the informer, Ramdhuni witness No. 16.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The proof against Mooktah Bamnee is full and conclusive. Her own confession and the possession of the stolen property prove her guilt. But the knowledge of the theft on the part of Kalachand is not ascertainable from the evidence on record. The sessions judge convicts of privity on the ground that he joined the first prisoner, and lived at the same brothel, in which she and his brother with whom she cohabited took up their abode some days after the theft. This is not sufficient to establish the offence of privity; and we acquit this prisoner, confirming the sentence passed upon Mooktah Bamnee.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
KASHINATH MONDUL.

Backergunge.

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September 19.

Case of KASHINATH MONDUL.

Prisoner convicted of aggravated culpable homicide and sentenced to fourteen years' imprisonment in labor and irons. Though murder was not premeditated, the attack upon the deceased was of so violent a character, and the provocation received by the prisoner was so slight, that the Court considered the crime to amount to aggravated culpable homicide,' and to call for a severe sentence and not to be simply culpable homicide requiring only a sentence of seven years' imprisonment, as recomended by the judge.

CRIME CHARGED.—Wilful murder of Bishen Ram Mondul.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 1st July, 1856.

Remarks by the sessions judge.—A difference in opinion between my law officer and myself as to the grade of homicide of which the prisoner is guilty, renders this reference necessary. The law officer convicts of wilful murder, and his sentence is *deyut*. I would convict of culpable homicide.

These are briefly the features of this case. The prisoner, a young man, and the deceased were relations; they lived in the same homestead, though in separate houses. It appears that there had been frequent, previous disputes between the parties, as also between their female relatives respecting a share in the said homestead belonging to the estate of a deceased mutual relation. The deceased had possessed himself of this share, his title was disputed by the prisoner. On the 18th of June last, a wordy war, arising from the above family feud, broke out between the wife of the deceased and the mother of the prisoner. The prisoner was then not at home, he had gone to a tank not far from the house. The deceased, who was at home, seized the mother of the prisoner by the hair of her head; her cries brought up the prisoner, he seized a long sharp pointed bamboo, standing in the courtyard, and which is used to scare away wild hogs from the crops, and thrust it rapidly twice at the deceased; the first thrust was directed to the right side under the nipple the second to the thigh. The wound produced by the first thrust caused death after a short interval. The wound produced by the second thrust was of a trivial nature.

The body was too much decomposed to admit of a careful "*post mortem*" examination. The medical officer deposes to being able to distinguish a punctured wound on the right side beneath the nipple, he probed this wound, there was communication from the outside with the inside. This wound, in his opinion, caused death. He deposes that there was also a punctured wound in the thigh.

The bamboo produced in court is about twelve feet long, thin

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and light, the point of it has been cut and rounded off; this is supposed to have been done by the prisoner.

The prisoner confessed before the police and before the magistrate, in this court he pleaded *not guilty*. His defence is this, that the deceased seized the prisoner's mother by the hair of the head; that the prisoner ran up threatening the deceased; that the latter ran away and in doing so fell down on a stump of a tree and a bamboo, and thus wounded himself. The prisoner further states that the mohurrir of the thannah caused him to be beaten, and that he was given something to drink before he was taken before the magistrate, he describes this drink to have been "red water." He declined having the evidence of the witnesses to his defence recorded.

The confessions before the police and the magistrate have been attested. The defence set up by the prisoner in this court is improbable and unsatisfactory; that he killed the deceased is clearly established by the testimony of the witnesses noted in the margin.*

* No. 2, Boodhaye.
" 3, Gopal.

The provocation received by the prisoner was very great, no greater insult can be offered to a native woman than to seize her by the hair. It must not be forgotten that the woman outraged was the "mother" of the prisoner. The weapon used was not one that would be used by a party deliberately and maliciously intending to commit murder, the thrusts were rapid and only two in number, they were not repeated "*after the deceased had released his hold of the prisoner's mother*," and I cannot convict of wilful murder.

Disagreeing therefore with the *futwa*, I find the prisoner guilty of culpable homicide, and would respectfully suggest as an adequate sentence, seven years' imprisonment in the zillah jail with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We do not coincide in the finding of the law officer, which convicts the prisoner of wilful murder, but think under all the circumstances of the case, that the crime amounts to aggravated culpable homicide and not merely culpable homicide as found by the sessions judge. Though there was no premeditation to murder, the attack made by the prisoner on the deceased is shown to have been of a violent and determined character, and the degree of provocation, which the judge appears to assign as the grounds for so light a sentence, was not in our opinion so great, as it is conceived to have been by that officer. Considering his sentence therefore inadequate, we sentence the prisoner to fourteen years' imprisonment with labor in irons.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. RADHEE

versus

BIJOYRAM DEB, (No. 1,) SHIB DEB *alias* SHIBRAM DEB, (No. 2 APPELLANT,) RAMDHUR, (No. 3, APPELLANT,) HURREERAM DHUR, (No. 4, APPELLANT,) SHOOKDEBRAM DEB, (No. 5, APPELLANT,) SHEIKH ALUK, (No. 6,) SHEIKH AZMUT, (No. 7,) SHEIKH DELAL, (No. 8,) SHEIKH EDOO, (No. 9,) SHEIKH HASHOO, (No. 10,) LUKHI CHUNG, (No. 11,) SHEIKH BASEER, (No. 12,) AND KANOO CHUNG, (No. 13.)

Sylhet.

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September 19.

Case of SHIB DEB and others.

Appeal rejected in a case of affray with homicide.

CRIME CHARGED.—Affray, attended with the culpable homicide of Madhoo Chung.

CRIME ESTABLISHED.—Affray attended with the culpable homicide of Madhoo Chung.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 18th June, 1856.

Remarks by the officiating sessions judge.—The particulars of this case are as follows: The deceased and Bijoyram Deb, (prisoner No. 1,) quarrelled regarding the division of some grain of which Bijoyram Deb, (prisoner No. 1,) claimed a share; he went to the deceased's house and demanded his portion, which the deceased refused to give up, this caused a dispute between the parties which led to an affray and in which the deceased received a wound which caused his death.

The prisoners before this court pleaded *not guilty*, but their replies before the police and the magistrate, which were duly attested and verified by the evidence of the subscribing witnesses, as well as the prisoners' defence before this court, and the evidence of the eye-witnesses in the case satisfactorily established the offence with which the prisoners are charged, but by whom the fatal blow was given and with what instrument the deceased was struck and his death caused there is no evidence to shew.

The civil surgeon, who held a *post mortem* examination on the deceased, deposed that he could not positively ascertain whether death was caused by disease or by a blow of a *lathee*, or some other weapon, but it is fully proved that the affray arose out of a dispute between the parties regarding the division of some crops, and there can be no doubt as to the fact of the de-

ceased being killed in the affray. I consider the prisoners on the side of the 1st party to have taken the most active part in the affray and to have been the aggressors, having first offered violence. I therefore, in concurrence with the verdict of the assessors, convict prisoner No. 1, of being the principal in the affray attended with culpable homicide, and the rest of the 1st party as accessaries; the prisoners on the side of the 2nd party though less to blame, were also engaged in the affray. I sentence all the prisoners as noted below.

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Case of SHIB DEB and others.

Sentence passed by the lower court.—No. 1, imprisonment without irons for four years and to pay a fine of Rs. 50; Nos. 2 to 9 to 3 years and to pay a fine of 30 Rs.; Nos. 10 to 13 to 2 years and a fine of 25 Rs. on or before the 28th June, or in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The charge against the prisoners is fully proved by the testimony of eye-witnesses, as well as their own confessions. We see no reason to interfere with the sentence of the sessions judge.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND SEETA SOONDEE

versus

BOODHOOA (No. 1,) SOOKHUR SINGH (No. 2,) AND BECHUN SINGH (No. 3.)

Chota Nagpore.

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Case of BOODHOOA and others.

The prisoners convicted of dacoity with severe wounding, were sentenced to transportation for life.

CRIME CHARGED.—Attempt to commit dacoity with severely wounding the prosecutor.

Committing Officer.—Captain W. H. Oakes, principal assistant commissioner of Lohurdugga.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 23rd July, 1856.

Remarks by the deputy commissioner.—The prosecutor states that one night in the month of Falgoon a gang of dacoits entered the enclosure of his house, and that on his wife making outcry, the prosecutor ran out, sword in hand and wounded some of them, but owing to the darkness he did not recognise any one. The dacoits then threw him down, wounded him severely on the back with an axe, and on the head with a club. They then decamped, and in the morning the villagers traced them by blood-marks to a jungle some distance to the north of the village.

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Case of BOODHOOA and others.

The prisoners plead *not guilty*.

Witness, No. 2, Kurmoo Singh states, that he heard from one Andua that the prisoners Boodhoo and Bechun, had been wounded. On being questioned and beaten by the police jemadar, he mentioned this.

These witnesses* heard the alarm, and on going to the prosecutor's house, found traces of the dacoits, and saw that the prosecutor had been badly wounded.

* Witness No. 5, Fagooa.
" " 7, Chumra.
" " 8, Fagooa, 2nd.
" " 9, Nurwa.

Boodhooram, native doctor, states that the wounds on the person of the prosecutor were such as to endanger his life.

The confessions of the prisoners before the police officer and before the principal assistant commissioner are attested by the subscribing witnesses.† The substance of these confessions is, that the prisoners with others, in all thirty persons, went to commit a dacoity in the prosecutor's house; that on his resisting, they fled. The prisoner Boodhoo stated before the police that the prosecutor had wounded him on the neck and leg, but before the principal assistant commissioner he states that these wounds were inflicted on him by the prisoner Bechun. The prisoners Sookhur and Bechun have, in both confessions, stated that they were wounded by the prosecutor.

† Witness No. 11, Sookul.
" " 12, Ghunnoo.
" " 13, Duria Singh.
" " 14, Feringee.
" " 15, Nagurlal.
" " 16, Duswant Singh.
" " 17, Jhurry.
" " 18, Adit Singh.
" " 19, Meer Owladally.
" " 20, Bhinuck.
" " 23, Kurrimbuksh.
" " 24, Lutf Ally.
" " 25, Sheikh Jaun.
" " 26, Surferaz Khan.

Witness, No. 28, Ghunsham states, that he heard the prisoners Boodhoo and Bechun with others consulting about committing a dacoity in Tala village, that on a Sunday he saw the prisoner Bechun, armed with a sword and club, pass through Mahlipara village, and that he one day noticed wounds on the prisoner Boodhoo.

Some other witnesses‡ give merely hearsay evidence as to the prisoners having been wounded.

‡ Witness No, 2, Kurmoo Singh.
" " 29, Mohur Singh.
" " 32, Bhudwa.
" " 33, Gunga Singh.
" " 34, Gopaul Singh

The prisoners, in their defence, retract their confessions. The charge is got up by one Mohur Singh, between whom and the prisoner Bechun a dispute about land exists. The wounds, of which they bear marks, were accidental.

Musst. Jeetnee, wife of the prisoner Bechun Singh, states that one day when bringing bamboos from a hill, the prisoner Bechun fell and cut his hands.

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Case of BOODHOOA and others.

The jury, whose names are entered below,* find the prisoners guilty on the evidence of their confessions.

The confessions of the prisoners are circumstantial, and they agree in all essential particulars. The wounds on their arms and legs are slight, but the existence of these wounds led to their apprehension, and the prisoners in their defence have not given a credible account of them. I therefore concur with the jury in the conviction of the prisoners.

The prisoner Sookhur admits that he was imprisoned seven years for highway robbery.

The wound inflicted on the prosecutor was very severe and dangerous.

I would therefore recommend that the prisoners be sentenced to imprisonment for life with hard labor in irons in transportation.

I may here observe that the confessions indicate a species of organization which, if it exist, should be sought out and suppressed. Two or more persons in each village seem to be at the bidding of a superior, and in the present instance a gang of about thirty persons was gathered out of eleven villages. This matter will be brought to the notice of the commissioner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We have no reason to doubt the truth of the prisoners' confessions, and the wounds shown on their persons add credibility to them. They have been committed for an attempt to commit dacoity, but the circumstances disclosed by the evidence prove that the dacoity was actually effected, although without acquisition of plunder. The crime, however, is equally punishable as if robbery had been accomplished, vide clause 1, Section 3, Regulation LIII. 1803. As the prosecutor was very severely wounded, the prisoners are liable by Clause 3, Section 8, Regulation XVII. 1817, to the sentence proposed by the deputy commissioner. We accordingly pass it upon them.

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* Lalla Gujraj Singh, mookhtear.
Ukhoury Injory Lall, ditto.
Ukhoury Luchminarain, ditto.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND KALEEDASS CHUCKERBUTTY

versus

KALACHAND SHEEL (No. 1,) ULLUKCHUNDER SHEEL (No. 2,) AND GOLUCKCHUNDER SHEEL (No. 3.)

Backergunge.

1856.

September 19.

Case of KALACHAND SHEEL and others.

Conviction upheld on appeal.

CRIME CHARGED.—1st count, No. 1, theft of property valued at Co.'s Rs. 907-8; 2nd count, Nos. 1 to 3, knowingly and wilfully receiving and keeping the stolen property.

CRIME ESTABLISHED.—1st count, No. 1, theft of property valued at Co.'s Rs. 907-8; 2nd count, Nos. 1 to 3, knowingly and wilfully receiving and keeping the stolen property.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 22nd April, 1856.

Remarks by the sessions judge.—The prisoners are three brothers. The evidence for the prosecution is satisfactory and sufficient, a considerable portion of the property stolen was found in the possession of the prisoners. The prisoners Nos. 1 and 2, stated in this court that they did not wish that the witnesses named by them in support of their defence should be summoned. The witnesses for the prisoner No. 3, say nothing in his favor. The *futwa* convicts, and I have sentenced the prisoners as stated below.

I have sentenced the prisoner No. 1, to a longer period of imprisonment than his brothers, because he is the eldest brother. Prisoner No. 2, is young.

Sentence passed by the lower court.—No. 1, to five years, No. 2, to two years and No. 3, to three years' imprisonment, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with the conviction and sentence in this case and reject the appeal of the prisoners.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND RAMNATH ROY *versus* GOPAUL DOSS.

Moorsheda-bad.

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Case of GOPAUL DOSS.

Held that there was no evidence on the record to bring home any guilty knowledge of the burglary to the prisoner, and his own admissions are far from warranting any certain conclusions against him.

Prisoner consequently acquitted.

CRIME CHARGED.—1st count, burglary and theft of property valued at Rs. 551-8; 2nd count, privity to the above burglary both before and after the fact; 3rd count, knowingly receiving and possessing stolen property acquired by the said burglary.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 30th July, 1856.

Remarks by the officiating sessions judge.—This reference arises from a difference of opinion between the law officer, who assisted me in this trial, and myself, and the circumstances of the case are these. A burglary was committed in the house of the prosecutor on the night of the 16th ultimo, and the next morning, information merely mentioning the fact was sent to the darogah of thannah Ahasunpoorah, by the gomashtah of the village. The darogah proceeded to the spot, and taking the deposition of the prosecutor's servant, Shulgram Singh, witness No. 8, found that property valued at Rs. 551-8 had been stolen in this burglary; this witness suspected one Bhogowan Doss, witness No. 13, as he had lately been discharged from the service of the prosecutor, and on his being examined, he stated that the prisoner No. 3, Gopaul Doss, had asked him where the prosecutor kept his property. Upon this, the darogah apprehended Gopaul Doss, who said that that morning as he was passing a certain jungle, not far from his house, he saw one Keshob in the jungle, and that this Keshob showed him a quantity of property which he was then concealing in this jungle, and accompanying the darogah to the spot, he pointed out a large bundle on the ground, which, on being opened, found to contain Rs. 171-11-5 worth of the property the prosecutor had been robbed of.

The *futwa* of the law officer convicts the prisoner, Gopaul Doss, of privity, and from this *futwa*, I dissent.

The prisoner's admission before the police, the officiating magistrate and this court, merely amounts to his having seen Keshob place the property in the jungle, but does not show that he knew this property was the prosecutor's, or that it had been obtained by burglary in his house. He states that he saw the property placed there at one-half *prohur*, and it was found by

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the darogah at two *prohur*, so that he had not much time to mention the fact to any one, and indeed is shewn to have stated it immediately he was questioned by the darogah, so that the doubt of his guilty knowledge of this crime is so great that the prisoner must have the benefit of the doubt.

But independently of this doubt, the prisoner is entitled to his acquittal as the case has been illegally investigated, and is therefore null and void ab initio ; Clause 2, Section 2, Regulation II. of 1832, distinctly lays down that no case of burglary unattended with personal violence, can be lawfully investigated by the police, unless a petition on unstamped paper is presented to them by an individual injured ; and Construction No. 708, rules that it is not sufficient that the prosecutor appears in person and deposes to the fact ; he *must* present a written petition, and in the case reported in the Nizamut Adawlut Report, volume 6, page 35, the proceedings were declared void ab initio for want of such petition, and the prisoner released ; and therefore, as no such petition was presented to the darogah in this case, and no order for investigation was made by the officiating magistrate, the prisoner is entitled to his acquittal, and I accordingly recommend that he should be released.

The darogah has been very remiss in his proceedings, and the attention of the officiating magistrate has been called to the fact by my letter No. 149, dated 30th instant, a copy of which accompanies these proceedings.

With reference to my remarks, in paragraph 5, I am of opinion that the case was committed on insufficient grounds.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) Irrespectively of the legal point noticed in the letter of the sessions judge, we find that there is no evidence on the record to bring home any guilty knowledge to the prisoner; and his own admissions are far from warranting any certain conclusions against him. Agreeing therefore in the view of the case taken by the sessions judge, we acquit the prisoner.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

NUZROO NUSHO.

Dinagepore.

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Case of NUZROO NUSHO

Appeal rejected.

CRIME CHARGED.—Dacoity in the house of Jurria Mundul, and plundering therefrom property valued at Rs. 25-4-0.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 27th May, 1856.

Remarks by the sessions judge.—This case was tried under Act XXIV. of 1843. On the night of the 30th March, 1856, some seven or eight dacoits attacked the house of the prosecutor, tore off his younger wife's ornaments, seized him, and, on his saying he knew them, knocked his teeth out with the blow of a *lattee*, and carried off property valued at Rs. 25-4-0. The prosecutor told the neighbours that he had recognized two men, and, on the arrival of the darogah, mentioned the prisoner and another. The prosecutor's statements in the foujdary and sessions are somewhat contradictory as to the man who held him while the other struck him, and he does not agree with his witnesses as to the time when he told them of his having recognized the men. The darogah gives him credit for having recognized several men, though he said before me that he knew only two of the party before. The others seem to have been actually apprehended on the confession of this confessing prisoner, though the prosecutor's deposition is dated the day before. The prosecutor was severely injured and confused, which may account for his not distinguishing between the night of the dacoity and the following morning, and I have no doubt as to his having recognized the prisoner, who confessed distinctly in the mofussil and before the magistrate. In his defence before me, he stated that he had been in a chowkeedar's house until midnight and he is supported in that by his witnesses, but it is by no means in his favor, as there was plenty of time for joining in the dacoity afterwards, and his plea of enmity with the prosecutor's son-in-law, because the latter's horses had trespassed on his field, is a failure. The prisoner was formerly punished for cattle theft and had recently absconded from a neighbouring village.

Sentence passed by the lower court.—Imprisonment with labor and irons for seven years.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The sessions judge has shown very good grounds for convicting the prisoner, who has urged nothing in his appeal to invalidate the judgment come to. We see no reason to interfere.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT AND RAMNARAYN GHOSE

versus

KOYLASH CHUNG (No. 1,) JADOO BAGDEE (No. 2,) NEELMONEE MOOCHEE (No. 3,) NOBIN* BAGDEE CHOWKEEDAR (No. 4,) GOPAL* BAGDEE (No. 5,) AND RUSSEEK* BAGDEE (No. 6.)

Hooghly.

1856. September 19. Case of Koylash Chung and others.

Prisoners charged with dacoity, &c. acquitted on appeal. The judge convicted on the evidence of witnesses, who in his opinion had perjured themselves. Pressure by the police was not a ground for not committing them for trial. The police had antedated a deposition, and committed other irregularities. The entire story of

CRIME CHARGED.—1st count, dacoity in the house of Ramnarayn Ghose, the prosecutor, on the night of the 26th April, 1856, corresponding with 15th Bysack, 1263, B. S. and plundering therefrom property to the amount of Rs. 48-12, viz. gold and silver ornaments valued at Rs. 45-12, and bell metal, household utensils Rs. 3; 2nd count, Nos. 2, 3 and 4, knowingly receiving a part of the above stolen property.

CRIME ESTABLISHED.—Nos. 1 and 3, dacoity; No. 2 dacoity and knowingly receiving a part of property acquired by the above dacoity.

Committing Officer.—Mr. F. R. Cockerell, officiating magistrate of Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 9th June, 1856.

Remarks by the additional sessions judge.—All six prisoners are charged with having committed a dacoity at prosecutor's house, on the night of the 26th April last. The prosecutor was away from home at the time, but his wife, witness No. 1, and a child, twelve years of age, were in the house when it was attacked and robbed. She was not maltreated in any way, but the ornaments she had on her person and the contents of a box inside the building (she herself was asleep in the outer *verandah*) were carried off. The party had a light with them, made little or no noise and consisted of about nine persons. Two relatives of her husband's, who live next door to her, appear amongst the witnesses, Nos. 2 and 18, and one of them, Jadoo Soor, declares

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* Acquitted by the lower court.

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he saw what occurred and recognised one of the dacoits. Notice was not given to the thannah till near noon the following day, (the thannah being but four miles off) by the village chowkeedar, witness No. 19, and then it was reported but one of the prisoners (No. 1,) had been recognised and named by the witnesses Nos. 1 and 2, subsequently others of the prisoners were said to have been recognised at the time, but this I do not credit. It is evident the first prisoner only was named and apprehended, and that when *he* denounced his associates, the darogah got the witnesses to say they had recognised them also to strengthen the case; and in supporting this story, witnesses Nos. 1, 2 and 19, have doubly perjured themselves. The first prisoner's confession was not written down till the 28th April, though he had been arrested (and probably confessed) the previous day, to favor this view; and this is made evident by witness No. 2's deposition taken down on the 27th *alluding to the prisoner Koylash's confession, which is dated the 28th April;* by the chowkeedar's report to the thannah the following day implicating by name prisoner, No. 1 only; and by the apprehension of prisoners Nos. 3 and 5, on 27th April. Altogether, the evidence is such that four of the witnesses (viz. Nos. 1, 12, 18 and 19,) must have been committed for perjury, but that I felt certain they had acted under pressure from the police and not from their own wish to deceive. There are some technical irregularities also which must be noted, but this shall be done in a separate communication.

The alleged dacoity open to much question. There was no proof of notorious bad character of one prisoner convicted and detained for security on that ground.

The evidence against the first prisoner in this calendar on the 1st count is, first his confession at the thannah (witnesses Nos. 8 and 10); secondly, that in consequence of this confession two prisoners were arrested, who confessed the crime to the magistrate, one of them having part of the stolen property found on him; and thirdly, the recognition of him at the time by witnesses Nos. 1 and 2, which, as far as he is concerned, is undoubtedly true. The evidence against the second prisoner, Jadoo Bagdee, is his own confession both in the mofussil and before the magistrate, the latter having been proved to have been made freely and voluntarily by witnesses Nos. 16 and 17; and 2ndly, the finding at his house the silver "*poinchee*" produced, which witnesses Nos. 2 and 19, recognise as the property of the prosecutor. Against the third prisoner, we have also the evidence of a free and voluntary confession before the magistrate, witnesses Nos. 16 and 17. Prisoner No. 1, in his confession denounced both these prisoners as having been associated with him in the offence.

Prisoner No. 4, was also denounced, but he has never confessed to the dacoity, and the silver ornaments he had given to witness No. 20 to melt up, are not claimed by the prosecutor, but are evidently the produce of some other robbery. Prisoner No. 3, says

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he gave them to him as hush money. Against prisoners Nos. 5 and 6, there is no evidence whatever. They were implicated by the confessing prisoners now under trial, and pleading *not guilty*, but that was all. The first prisoner again pleads *not guilty*. He says the police made him confess by torture, and compelled him to remain silent while his confession was being attested. He cites witnesses to character and to prove he was at his master's house (half a mile off only) on the night of the dacoity; and he adds the witness, Jadoo Soor, said he recognised him in the act, because two or three days previously he, Jadoo Soor, had come to fish in prisoner's master's tank, when he (prisoner) had beaten him, the prosecutor's wife, witness No. 1, confirming Jadoo Soor's recognition *from being on terms of criminal intercourse with him.* The three witnesses examined in support of these pleas say, prisoner was absent from his master's house that night, *saying* he was going to visit a sick relative; never heard of the dispute with Jadoo Soor; and are unable to say what character he bears.

The second prisoner Jadoo Bagdee, repudiates in this court his two previous confessions. He says the darogah beat him, and wrote down what he chose and that he knows nothing as to what he was made to depose before the magistrate. He adds, the "*poinchee*" found in his house is his own, and (immediately afterwards) he does not know where it was found. He calls one of prosecutor's witnesses (No. 11,) to speak to his character, who says nothing in his favor.

No. 3, prisoner Neelmonee Moochee, pleads as No. 2. His witnesses, three in number, merely say he is a weaver by trade, and that *therefore* they look upon him as a man of good character.

I have tried this case under Act XXIV. of 1843, without law officer or jury, and I convict prisoner Koylash Chung on the 1st count, the prisoner Jadoo Bagdee on both counts, and the prisoner Neelmonee Moochee, on the 1st count only. Nos. 4, 5 and 6, are acquitted, but No. 4, Nobin Bagdee, being evidently an associate of robbers and a dangerous character, will furnish security to the amount of 50 Rs. for three years under the provisions of Regulation VIII. 1818, Section 10, *and Regulation III. of* 1819. The three first prisoners are sentenced to ten years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The judge considers that the principal witnesses in this case have doubly perjured themselves, and that the police have not only suborned them to do so, but have tampered with the evidence, yet on the evidence of these witnesses and on confessions taken originally before this police, the judge convicts the prisoners.

The only evidence against the prisoner Koylash Chung is that

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of witnesses Nos. 1 and 2, who are declared generally to have perjured themselves, but whose evidence against this prisoner the judge declares to be "undoubtedly true." No reason is assigned for this opinion, and we are unable to concur in it. When the witness, No. 19, the chowkeedar of the village, gave information at the thannah, he mentioned the persons recognized by witness, No. 2, (Jadoo Soor,) and himself, but Koylash Chung was not one of them. This Koylash Chung is well known both to the witness No. 1, (Sheeboo Dassee,) and to Jadoo Soor. Yet he is said by the former to have gone undisguised into Sheeboo Dassee's house on a moonlight-night, to have lighted mussals there, as if to enable her the better to recognize him, and to have stripped her of her ornaments with his own hands. This story is not only improbable, but is inconsistent with that of Jadoo Soor, who says that the prisoner was standing near the door of the house, and when he attempted to approach, struck him with a *lattee* and drove him off. One witness, therefore, represents Koylash Chung as actively engaged in the plunder inside the house, the other as keeping watch outside, functions which in dacoit gangs are entrusted to different individuals.

The witnesses, who swear to the '*poinchee*' found on Jadoo Bagdee's premises, are Jadoo Soor and Badul chowkeedar, both of whom are said to have perjured themselves. Why the judge should have placed more reliance on their testimony, with regard to the '*poinchee*' than to other matters, we have been unable to discover. The evidence of these two men, in the different courts, though not, we think, legally chargeable with perjury, is so full of discrepancies and contradictions, that it is impossible to place any reliance on it.

The darogah seems to have kept back the reports and depositions of the 27th, 28th and 29th of April, and forwarded them all together on the 1st of May. The abstract of Jadoo Soor's deposition, however, which purports to have been written on the 27th of April, was evidently not written until after the 28th; as Koylash Chung's confession which was taken and forwarded on the 28th, is therein alluded to. The judge, who observes this, draws the conclusion from it, that the confession was taken on or before the 27th; but it is not the practice of darogahs to keep confessions, after they have been taken. Their anxiety is to get the confessions and confessing prisoners before the magistrate as soon as possible. And the fact of the depositions having been kept back till the 1st May, leaves no doubt that it is the date of the deposition and not of the confession, which has been falsified.

We have considerable doubts whether the whole story of this dacoity is not a fabrication. According to the statements of the witnesses, the dacoits must have waited for the rising of the

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moon, before they commenced their operations, and the gang consisted chiefly of persons with whom they were well acquainted, and most of whom appear to have been previously of unblemished character. Both of these are very improbable circumstances, and the statements of the witnesses are evidently false, in so many particulars, that it is impossible to say, with certainty, that there is any truth in them at all.

We do not see any reason to believe with the judge that the witnesses acted under any pressure from the police. On the contrary, it is evident from the chowkeedar's information at the thannah that witnesses Nos. 1 and 2, were prepared with the main facts of this story before the police made their appearance. If the judge had any reason for the opinion he gives, that the police instigated the witnesses to perjure themselves, it was his duty to direct the commitment both of witnesses and police, the former for perjury and the latter for subornation. The excuse which he gives for not committing the witnesses whose perjury he considered proved is most unsatisfactory. The pressure exercised upon them (if it had any real existence) might have been pleaded by the witnesses, when placed on their trial in extenuation of their guilt, but ought not to have been assigned by the judge as an excuse for failing to send them before the magistrate.

We can place no reliance upon the two unsupported confessions before the magistrate, in a case so full of suspicion as this is. The prisoners must be acquitted and released.

Prisoner, No. 4, although acquitted of the dacoity, has been sentenced by the judge, as an associate of robbers and a dangerous character, to be imprisoned for three years in default of furnishing security for his good behaviour, and has appealed against the order. We see no proof of his dangerous character in the papers before us, and the judge does not give the grounds of the opinion he has formed respecting him. If it is considered necessary to call on him to furnish security, his character and pursuits should form the subject of a thorough inquiry, and the grounds on which he is stated to be a bad character should be distinctly set forth. We direct his release also. Copies of our remarks and those of the sessions judge in this case, will be forwarded to the commissioner, in order that he may take such notice as he may think proper of the conduct of the police in this enquiry.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT AND SHEIKH BEERAHIM

versus

SHEIKH RUHEEM.

Dacca.

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Case of SHEIKH RUHEEM.

The prisoner was acquitted of murder. Attention drawn to Section 7, Regulation XIV. 1810.

CRIME CHARGED.—1st count, wilful murder of Musst. Aychallee, the wife of the prosecutor; 2nd count, stealing from the person of the deceased her ornaments valued at Rs. 14-1; 3rd count, keeping in his possession the above stolen property knowing the same to have been stolen.

Committing Officer.—Mr. C. Jenkins, officiating magistrate of Dacca.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 26th July, 1856.

Remarks by the officiating sessions judge.—In committing this case, the magistrate observes: "The enmity proved to exist between the prosecutor and the prisoner, the discovery and recognition of the footprints in the mud at the spot where the dead body was found, the production of the stolen ornaments by the prisoner, and the prisoner's own confessions, form the grounds of proof in the present case, the prisoner was therefore committed on the 9th July, 1856, to take his trial before the sessions court on the above counts of wilful murder, theft and possession of stolen property."

The prisoner in this court denies his guilt, and attributes his confession before the police to maltreatment, and before the officiating magistrate to the threats of the police.

The *futwa* of the law officer declares the prisoner *guilty* on his own confession of *kutli-shibeh amud*, and liable to *tazeer*.

There are no witnesses to the murder, but the body of the murdered woman was found by her husband on the 18th of June, and on that day at 9 P. M., he reported the murder and accused the prisoner on general suspicion from previous enmity.

The police arrived at the scene of the outrage on the 19th, and an inquest was held on the body.

On the 20th, a report is transmitted with a list of ornaments stolen from the body.

On the 21st, the darogah reports that he had searched the house of the prisoner not yet apprehended.

On the 22nd, no report. On the 23rd, a deposition charging the plaintiff with the murder on general suspicion is lodged by

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* Sheikh Runnoo.
Sheikh Adum.

the father of deceased. The prisoner is reported as apprehended by the witnesses* on the 22nd.

On the 23rd, he denied the commission of the murder.

A little before day-break of the 25th, the prisoner escaped, but was re-apprehended during that day. On the 26th, he confessed and on the same day pointed out some of the personal ornaments of the deceased hidden near the plaintiff's house.

On the 30th, he arrived at the station.

† No. 1, Sheikh Runnoo.
„ 2, Sheikh Adum.
„ 4, Tara Gazee.
„ 12, Sheikh Kurreem.

Witnesses† (Nos. 1, 2, 4 and 12,) depose that owing to a malformation in the prisoner's foot, they were able to identify his foot-marks in the clayey mud where the body of the deceased was found.

The police reports allow that the prisoner was in custody from the 22nd, to near day-break of the 25th, and from the afternoon of the 25th till the 27th, but the evidence in this court shows that this culpable mode of procedure on the part of the police was far more flagrant than what the reports admit. The witnesses, Sheikh Runnoo and Sheikh Adum, (Nos. 1 and 2,) state that the prisoner was apprehended by them on Friday, and the witnesses, Himmut Khan, Sheikh Kurreem and Sheikh Ashruf, (Nos. 5, 12 and 14,) state that he escaped on Wednesday night, was re-apprehended on Thursday, and confessed on Friday. The dates, they are uncertain about, but they are positive as to the names of the days. By this account, the prisoner was apprehended on the 20th, not on the 22nd, and escaped before dawn of the 26th, and not of the 25th, and on examination of the police reports, I find the dates of the reports have been altered or tampered with. There is therefore every reason to believe that the evidence of these witnesses is true. They are mere countrymen and were not aware that their depositions as to the names of the days, ran counter to the police report as to the dates.

With regard to finding the property, I think it highly improbable that a fugitive trying to evade the pursuits of the police, should make use of the short time he was at liberty to remove property liable to ensure his conviction from a comparatively distant place and secrete it near the plaintiff's house, then the head-quarters of the police. The prisoner's house is west of the plaintiff's, and he is represented as having hid the property on the east of the plaintiff's house.

If the confession was forced, the pointing out the ornaments must be considered as a part of that transaction. I think there is internal proof that the confession was extorted. There was no more proof against the prisoner, when he did confess, than when he was first apprehended, it could not therefore have been

made under the influence which leads a criminal to confess when some new and unexpected testimony takes away all hope of escape; neither is there any ground to believe that he was acted on by remorse. The only remaining motive is the one urged on his defence, that he was unable to sustain the maltreatment he received, so that he first ran away, and on his re-apprehension confessed, and this plea is strengthened by the fact that he was many days in custody before he did confess, and that the police reports are proved not trustworthy.

Some stress is placed on the recognition of the foot-marks. I should have considered such proof perfectly satisfactory had it been tendered to the darogah on his arrival at the spot. There is nothing on record about the recognition of foot-steps till the date of the prisoner's confession. This destroys the weight of that evidence. It is not credible that with such strong proof at hand of the prisoner's guilt, the darogah should continue daily to report that he was acting only on suspicion.

There can, however, be no doubt that the prisoner confessed before the officiating magistrate, and I am convinced that the confession was recorded with the utmost caution, still the proof of the prisoner's guilt begins and ends with the confession, it is incorroborated by any very trustworthy evidence and was first given by the prisoner when under illegal duress. Under these circumstances I think that the prisoner confessed under the influence of fear, I therefore dissent from the *futwa* and recommend his release.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The main proof against the prisoner is his confession, which was recorded under the highly suspicious circumstances detailed by the sessions judge, and which therefore cannot be admitted. We concur with that officer in acquitting him. The prisoner is accordingly ordered to be released.

P. S. The prisoner should have been admitted to bail pending the result of this reference. See Section 7, Regulation XIV. 1810.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
NEHORAL AHEER (No. 1,) ON ONE SIDE, SEEREE AHEER (No. 2,) AND RAMROOP AHEER (No. 3,) ON THE OTHER SIDE.

Shahabad.

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Case of NEHORAL AHEER and others.

Prisoners' appeal rejected; the evidence on the record clearly proves their presence at and participation in, the affray with culpable homicide with which they were charged.

CRIME CHARGED.—Affray, attended with wilful murder of Girdharry Aheer and wounding Nehoral Aheer (on one side) and wounding Seeree Aheer (on the other side) in which his arm was broken.

CRIME ESTABLISHED.—Affray, attended with culpable homicide of Girdharry Aheer, wounding Nehoral Aheer, on one side and wounding Seeree Aheer, on the other side in which his arm was broken.

Committing Officer.—Mr. H. C. Richardson, officiating magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 25th February, 1856.

Remarks by the officiating sessions judge—This case has been tried with the assistance of a jury of three persons.

From the evidence, it appears that on the afternoon of the 22nd January, 1856, a quarrel arose between some of the villagers of Serouja and Sikrour about the taking away of some grass, &c., from a field said by those of the former village to belong to Girdharry and by those of the latter to Sheophul Roy; no previous dispute appears to have existed regarding the field, a fight ensued in which Girdharry and Nehoral, on the one side, and Seeree Aheer, on the other, were wounded; on the same night Girdharry died from the injuries received, his skull having been most extensively fractured. Seeree Aheer's arm was broken.

With the exception of one person, an inhabitant of Khelafutpoor, all the witnesses are interested parties, belonging to the villages between the inhabitants of whom the affray took place, they of course speak in favor of their respective sides; it does not appear that the deceased was struck by prisoners Nos. 2 and 3, and No. 1, is a relative of his; the jury convict the three prisoners of being concerned in an affray, in which Girdharry was killed and Nehoral Aheer and Seeree Aheer were wounded. Concurring in opinion with them, I convict the prisoners of the crime and sentence them each to imprisonment for seven years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) Appellants' petition asserts that there was no evidence to show that they were concerned in the affray. On turning to the record, we find that the direct evidence of the witnesses proved their presence and participation, though it could not be determined on such evidence by whom the fatal blows were struck, or which of the parties was the most culpable.

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Case of NEHORAL AHEER and others.

We see no grounds for interference with the sentence passed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

KISHTO SHEET (No. 21,) AND MUDHOO SAMOEE (No. 22.)

Midnapore.

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Case of KISHTO SHEET and another.

The prisoners were sentenced to transportation for life as professional dacoits.

CRIME CHARGED.—1st count, dacoity in the house of Puddolochun Das native of Tajnugur, thannah Basooliah; 2nd count, dacoity in the house of Kalleedas Nag, (darogah of Ghat Roosoolpore), thannah Nemal; 3rd count, No. 21, dacoity in the house of Sunkur Hajra, master of Seebram Berah, plaintiff, resident of Gopynathpore, thannah Nemal and No. 22, dacoity in the house of Soondur Sahoo, son of Rampershad Sahoo, resident of Ticassy, thannah Kunchunnugur; 4th count, No. 21, dacoity in the house of Urjoon Mundul, brother of Toolseeram Mundul, resident of Suffeeabad, thannah Nemal; 5th count, being by profession dacoits and having belonged to a gang of dacoits under Sirdars Dhunnoo Bhooya and others, convicts.

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 31st July, 1856.

Remarks by the officiating sessions judge.—The prisoners plead "*not guilty*," but they are identified by the three approver witnesses, who denounce them as having belonged to gangs of dacoits, and with having accompanied the witnesses, and committed the dacoities with which they are respectively charged.

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In support and corroboration of their testimony, the record of the cases with which they are charged, have been laid before the court. The record No. 291, of the first dacoity charged, shews its occurrence on the 21st March, 1846, in the house of Puddolochun Das, when property to the amount of Rs. 1,351-8, was plundered. That night Kaleepershad Das and others gave information to the police. The following day Juggernath Das, a cousin of the prosecutor, deposed that he had recognised the following dacoits: Keenoo Paramanick, Soobut Baidee, Sagur Baidee and seven others.

Nuthee No. 291, dacoity in the house of Puddolochun Das.

Nuthee No. 484, dacoity in the house of Kalleedos Nag, darogah.

Khatma report (copy,) No. 1, dacoity in the house of Sunkur Hajrah, master of Seebram Bera.

Nuthee No. 226, dacoity in the house of Soondur Sahoo.

Nuthee No. 432, dacoity in the house of Urjoon Mundul, brother of Toolsaram Mundul.

A burkunda , Fukeer Mahomed, it appears, had been deputed to look after one Soondur Sahoo chowkeedar, who had failed to make his daily reports at the thannah. He accordingly went to the village of Brahman Sasun, where he ascertained that the said chowkeedar, Khosal and Narain Geerees had absented themselves for three days. The Geerees. who were then known as bad characters, were arrested on the 23rd March, and Khosal confessed that on information received from Sonadhur Khanda their spy, he and Narain Geeree, Keenoo, Sridhur Tiharee, Rajon Geeree, Mudhoo and Dhunnoo Booeeahs of Muredopara, witnesses Nos. 2 and 3, of this trial, Kishto Sheet of Bonomal Beriah prisoner, No. 21, of this trial, Mudoo Samoee of Awooree prisoner, No. 22, of this trial, committed a dacoity at a place thirty miles off. On the 24th March, Mudhoo and Dhunnoo Booeeah, Soonadhur and the prisoners* were arrested, and denied the charge. Soonadhur confessed naming Khosal and Narain Geerees and others as his accomplices, but not the prisoners or witnesses of this trial.

* No. 21, Kishto Sheet.
,, 22, Mudoo Samoee.

The prisoners Nos. 21 and 22, of this trial were at first released by the police on bail, and the witnesses Nos. 2 and 3, only sent in. Subsequently by order of the magistrate on a view of the darogah's final report, both prisoners were forwarded to the sudder station, denied their guilt and were afterwards discharged.

The record of the next dacoity charged, case No. 484, shews that on the 23rd June, 1852, a dacoity was committed in the house of Kalleedas Nag, salt darogah, stationed at *ghat* Russoolpore. The prosecutor in his deposition mentioned his suspicions against Chundee Sasmul, Goburdhun Jana, Dhunnoo and Mudhoo Booeeahs of Mundopara, Ram Royah, Rajun Geeree and others.

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On some information received from Puhalnath Geeree and Bahooram Doss, one Chundee Poriah was arrested by the police, and on 28th June, confessed to having committed the dacoity, naming as his accomplices Dhunnoo Doss, witness No. 1, Sumbhooram Naik, Dhunnoo and Mudhoo Booceahs, witnesses Nos. 2 and 3, of this trial, and his uncle, Choitan Poriah amongst others. Choitan Poriah, when arrested, confessed implicating Dhunnoo Doss, Dhunnoo Booeeah and his brother.

Kisher Poriah also implicated in his confession the three approver witnesses.

Sumbhooram Naik also confessed and mentioned those three men and the prisoner Mudhoo Samooee as accomplices.

The final report of the darogah was transmitted on 14th July, 1852. As far as appears from the record, the houses of the three approver witnesses, Dhunnoo Doss, Dhunnoo and Mudhoo Booeeahs, as also that of the prisoner, Mudhoo Samooee No. 22, were searched and property which was found in them recognized by prosecutors. Their examination was not taken, nor were they sent in to the magistrate, who seems to have taken no notice of this extraordinary omission.

The record of the next dacoity charged in the house of Sunkur Hajrah appears from a report of the foujdary record-keeper, dated 26th April, 1856, to have been lost, a copy of the final report of the darogah, dated 19th August, 1847, and of the list of plundered property was obtained by Capt. Keighly, and has been laid before the court. The prisoner No. 21, Kishto Sheet, appears to have been arrested and to have made confession before the police, to prove which, both the darogah and jemadar have given their evidence; the concluding part of the report, however, shows that the darogah at the time did not place reliance on it. Five prisoners were committed to the sessions, but acquitted. Most serious notice should, in my opinion, be taken of the conduct of the muhafiz of the magistrate's court for the loss of the record.

The record of the case No. 226, shows a dacoity to have occurred on the 23rd March, 1843, in the house of Soondurnarain, son of Rampershad Sahoo, and 163 items of property to have been plundered.

On the information of Nursing Mundul chowkeedar, and Beeroo Booeeah Pyke, given on 13th April, 1843, one Musst. Champee, the mistress of Dhunnoo Booeeah chowkeedar, witness No. 2, of this trial, was arrested, and in her examination mentioned that Mudhoo Samooee, prisoner No. 22, the three witnesses* of this trial with others consulted about committing this dacoity, and started for the purpose, and that Dhunnoo and Mudhoo Booeeahs returned only at day-break.

* No. 1, Dhunnoo Doss.
" 2, Dhunnoo Bhoonya.
" 3, Mudhoo Bhoonya.

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Both the prisoners and witnesses of this trial denied the charge at that time. It appears from the record that a darogah in the salt department was denounced as one of the dacoits and the charge was reported by the police darogah to be a false one. On the 8th August, 1843, one Bhowannee Pridhan was sentenced to three months' imprisonment for the same, and Ramkishto Chuckerbutty, jemadar, dismissed.

The record of the fifth case No. 482, sets forth that on the night of the 26th January, 1852, a dacoity was committed in the house of Urjon Mundul, the brother of Toolsaram, and 94 Rs. worth of property plundered.

Ramkishto the nephew of Toolsaram, and then a youth of about fifteen years, gave a deposition on oath declaring he had recognized amongst the dacoits, Unundee Pridhan, Laloo Mussulman, Babooram Dulooee, Kishto Sheet of Bonomal Beriah the prisoner No. 21, and Juggoo Doss. Kishto Sheet was arrested and denied the charge. He was discharged by the deputy magistrate, who did not think conviction on the trial probable.

The testimony of the approver witnesses is so fully and strongly corroborated by those records, that it may be unhesitatingly trusted for the conviction of the prisoners. As to the impression entertained by the magistrate that no dacoity took place in Soondurnarain's house* it can have no weight, for the prosecutor and witnesses were not examined. He acted on the darogah's report.

I would therefore convict the prisoners of having belonged to a gang of dacoits and would recommend that they be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to distrust the evidence of the approvers in this case. It is strongly corroborated by the circumstances detailed in the letter of reference; from which it is evident, that the prisoners have long been connected with gangs of dacoits; moreover the witnesses for the defence give the prisoners a bad character. We convict and sentence them as proposed.

* Case No. 226.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

DOHEE PATTUR.

Midnapore.

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Case of DOHEE PATTUR.

The prisoner was sentenced to transportation as professional dacoit.

CRIME CHARGED.—Being by profession a dacoit, and having belonged to a gang of dacoits.

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G P. Leycester, officiating sessions judge of Midnapore, on the 6th August, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty,*" and in his defence states that he was subjected to oppression and made to confess. Before this court he cites Urjoon Kamila, Unnoo, Anundo Roy and Safulram Mytee as his witnesses in addition to those he had named before the committing officer.

On the 9th, 10th and 14th the prisoner confessed before Captain Keighly, his participation in the three dacoities mentioned in the calendar, as also in the deliberate murder of one Ruggoo Das.

The confession of the prisoner in the lower court is attested by two witnesses, who swear to its having been voluntarily made which there is no reason to doubt. The committng officer has duly certified the same.

Of two witnesses named in column 12 of the calendar of commitment, witness No. 3, Mullika Debee, died seven years' ago. Witness No. 4, Kalee Churn Mytee, swears that a dacoity was committed in his house on 24th Joistee, 1258, of which Sheikh Hasoo, Pursun Mytee and Rajun Kaurah were convicted in this court and sentenced to various terms of imprisonment. This is confirmed by the record of the trial before the sessions court.

On further support of the case for the prosecution, the documents noted in the margin* have been laid before the court, and have no doubt of the occurrence of the dacoities detailed in the prisoner's confession. In regard to the first of them, prisoner admits before this court his having been apprehended in Beesoo Misser's dacoity, which occurred on the 16th July, 1847, and that he was in *hajut* when the prisoners in Debee Mytee's dacoity were sent

* Record of trial before sessions court in Beesoo Mytee's case.

Copy of a register of the Balasore magistrate's court in regard to a dacoity in Uchob Georee's house.

The foujdary record in Debee Mytee's case.

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into the magistrate, but this is hardly possible, as that case was finally disposed of in the sessions on 8th January, 1848, and the dacoity in Debee Mytee's case only occurred about two and half years after, viz. on 4th June, 1851, the prisoner now suggests that he was imprisoned in some salt case. The witnesses to the defence, though they admit Debee Pattur has some ostensible means of living, with one exception, denounce him as a bad character. Three of the four witnesses cited by him in this court have given their evidence this day, but in no way support the prisoner's plea that he was forced to confess; I therefore convict the prisoner of having belonged to a gang of dacoits and recommend that the prisoner be transported for life.

On perusal of the above letter the following Resolution No. 385, dated the 6th May, 1856, was recorded by the Court. Present: Messrs. B. J. Colvin and J. H. Patton.

The Court observe that the only proof contained in the calendar in this case, is the evidence of two witnesses to the confession of the prisoner in the foujdary and the evidence of Kallee Mytee, to prove the occurrence of the dacoity in his house. Mullika Debee being dead, her evidence taken in the sessions court on the 5th January, 1848, is filed in proof of the occurrence of the dacoity in her husband's house, but it is necessary to prove her evidence, and with that view the mohurrir who recorded it, or some other officer before whom it was taken, should be required to prove it formally. There is no explanation why the evidence of the approver, upon whose information the prisoner was apprehended, was not taken at the sessions court in the present trial. If still forthcoming his evidence should be taken now, or, if not, his former deposition recorded before the joint-magistrate should be given in evidence in the sessions court, with witnesses in attestation of it, according to Circular Order No. 24, dated 16th July, 1830, (paragraphs 6 and 7.) The fact of the occurrence of the dacoity in the house of Wotsub Giri ought also to be proved, if possible, by the evidence of some persons who can speak to it having taken place. The Court therefore return the proceedings that these omissions may be supplied. After recording the fresh evidence above indicated, the sessions judge will again call upon the prisoner for any further defence he may have to offer. The sessions judge will also test by due enquiry the truth of the prisoner's statement that he was in jail, as stated by him, at the time of the occurrence of Debee Mytee's dacoity. The Court further remark that the prisoner's confession is only signed by him at the end. As it extended over so many pages, it would have been better if he had been required to sign each sheet and it should be explained why it was recorded in Bengalee, the deponent being an Ooriah, and signing his name in the Ooriah language. See Section 7, Regulation IV. 1797.

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From officiating sessions judge of Midnapore No. 228, dated 6th August, 1856.—Agreeably to the resolution of the Court, No. 385, of the 6th May, 1856, the evidence of two vakeels of this Court, who sat as assessors on the trial, has been taken to prove the deposition of Mullicka Debee, the peshkar who wrote it being dead.

Captain Keighly, assistant commissioner for the suppression of dacoity and joint magistrate reports in his letter, No. 94, dated 17th May last, that the sentence (transportation for life,) passed against the approver Odoy Mytee had been carried out before the trial took place, and for this reason his evidence was not available. Captain Keighly has now submitted, as evidence, the original confession of this prisoner which has been attested by two witnesses before whom it was taken. The only deposition given by this man as to the identity of the prisoner Dohee Pattur, is attested by a mohurrir of Captain Keighly's office, Abdool Aziz, who wrote it, but this witness states that Odoy Mytee, owing to breach of faith forfeited the privileges of an approver. His evidence can therefore be of little or no value

To prove the occurrence of a dacoity in Oochub Geeree's house, three witnesses have been named, one has died and two have given their depositions in this court, they can only speak from hearsay of the fact, and Rajun Pattur adds that he was cited for the defence of one Soobul Pudan, who was arrested in the dacoity and convicted of it.

A roobacaree was forwarded on 16th May to the magistrate and from his reply and its accompaniments, it would appear that Dohee Pattur had been constantly summoned from the 15th February, 1851. The excuse made by the police for not sending him in, was that he was unwell; at last a report dated the 4th June, 1851, was received from the mohurrir of thannah Sagaressur stating, he therewith sent the prisoner Dohee Pattur, in charge of Bodeedoss Pyke. That report does not appear to have reached the magistrate's office till the 7th of that month, on which day only was the order passed to put the prisoner in *hajut*. It is impossible to say what the prisoner and Pyke did or may have done during the interval between the day of the 4th and the date of their arrival at the station. Nothing elicited from these papers is calculated to release the prisoner from the consequences of his confession. The supposition that he was in jail, or in any such custody as precluded the possibility of his committing the dacoity on the night of the 4th to which he confessed is, it appears to me, entirely overthrown.

The explanation required at the close of the Court's resolution and furnished by the committing officer is herewith submitted, together with copies of the correspondence which has resulted, since the receipt of the said resolution.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J.

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Colvin and J. H. Patton.) We see no reason to doubt the truth of the prisoner's confession in this case, both that he made it freely and voluntarily, and that it is fully credible. The occurrence of several of the dacoities, upon which the charge is based, is well attested also. We therefore concur with the officiating sessions judge in convicting the prisoner of having belonged to a gang of dacoits, and sentence him to transportation for life.

We observe that it has been explained, why the prisoner's confession was taken in Bengalee, which is the language he spoke, as he is an inhabitant of the Sagaressur thannah, although he signed his name in Ooriah.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND NARAYN SAMUNTO

versus

SRISHTIDHUR SAMUNTO, (No. 3,) JUGGUT SAMUNTO, (No. 4,) OTILDOME CHOWKEEDAR, (No. 5,) BOROHARI BAGDI CHOWKEEDAR, (No. 6,) CHOTOHARI BAGDI CHOWKEEDAR, (No. 7,) BOYKUNTO BAGDI, (No. 8,) AND SHAM SAMUNTO ALIAS SHAMCHUND SAMUNTO, (No. 9.)

East-Burdwan. 1856. September 20. Case of SRISHTIDHUR SAMUNTO and others.

In a case of riot, &c. appeal rejected. The discrepancies in the evidence were immaterial and natural.

CRIME CHARGED.—Riotous assault upon Kishto Samunto, Narayn Samunto prosecutor, Gopall, Goshyedass Samunto, Nuboo Dan, Ramdhun Samunto witnesses, attended with the murder of Kishto Samunto. The prisoners, Nos. 5, 6 and 7, being police chowkeedars at the time of the occurrence.

CRIME ESTABLISHED.—Riot, attended with culpable homicide.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of zillah East Burdwan, on the 16th July, 1856.

Remarks by the officiating sessions judge.—The trial of this case was commenced by the additional sessions judge, who cancelled the commitment and directed its recommitment on a charge of affray instead of riot, but after a reference to the Sudder Nizamut Adawlut, the case was recommitted on the former charge.

It appears from the evidence of the prosecutor and his witnesses that prisoner, No. 3, is the uncle of Kishto Samunto,

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the deceased, and that there has been a feud of long-standing between the families. On the 3rd of October last, there was a quarrel between the two parties about a fish-trap, (*ara*,) the exact particulars of which have not been disclosed. Next morning Gopaul, a brother of Kishto, was maltreated by some of the other party, and on Kishto going to the spot, by order of prisoner No. 3, his two sons, prisoner, No. 4, and Pertaub Samunto struck Kishto two blows on the head with *lattees*. Others of Kishto's party, were also assaulted. Kishto died in the course of the day from the effects of the blows.

The civil assistant surgeon has proved that Kishto's skull was fractured by a blow inflicted with a heavy instrument, quite sufficient to account for death, and that witnesses Nos. 1, 2 and 3, had marks of slight blows and small skin wounds visible on their persons when they were examined three or four days after the occurrence.

Prisoner No. 3, who has a wound in his right ear inflicted by a sharp cutting instrument, states in his defence that the other party were fighting among themselves about the fish-trap, and that he went to separate them, when by order of the prosecutor, he was attacked and his ear cut with a sickle.

Prisoner No. 4, states that when he heard that his father had been wounded, he went to the spot and supported him to his house.

The other prisoners plead *alibis*.

Witnesses Nos. 16 and 18, confirm the statement of prisoner No. 3. The former asserts that Kishto was lying on the ground at the time prisoner No. 3 was attacked, and the latter asserts that he did not notice whether Kishto was there or not.

The *alibis* have not been satisfactorily established.

The jury* are of opinion that although the real facts of the riot have not been disclosed, yet there is violent presumption that all the prisoners were present. They convict prisoners Nos. 3 and 4, of being accomplices in the riot in which Kishto was killed and in which Gopaul Gosai Dan and Nubbocoomar were wounded. They acquit the rest of the prisoners, because it has not been proved that they were actively engaged in the attack. All the witnesses for the prosecution belong to the party at variance with the prisoners, and it is much to be regretted that witnesses unconnected with either party were not produced.

* Moonshee Zahad Ali.
Baboo Bonmallee Mookerjee,
" Ramdhun Mookerjee, vakeels.

But on the other hand, it appears that the witnesses have adhered throughout in a consistent manner to their statements, and notice of the occurrence was promptly given to the police.

It is very probable that the circumstances which led to the

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occurrence have been concealed and that the manner in which Kishto was killed has not been correctly described, but there is no reasonable grounds to doubt that the prisoners were actually engaged in a riot and that Kishto was killed in that riot.

I convict all the prisoners of the crime of riot attended with culpable homicide, and sentence them to three (3) years' imprisonment with labor, the labor to be remitted on payment of a fine of 20 Rs. if paid within twenty days.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and L. J. Money.) We see no reason to interfere with the sentence of the sessions judge in this case. The discrepancies pointed out by the prisoners' pleader in the evidence of the different eye-witnesses are not material. They are such as might naturally be expected in the statements of witnesses, who reached the scene where the riot was committed, at different times, and observed it from different points, and do not in the least affect the main fact established against the prisoners, their presence in the riot. We observe that the case was tried by a respectable jury and the sentence is a lenient one.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, J. S. TORRENS, ESQ., AND C. B. TREVOR, ESQ., *Officiating Judges.*

GOVERNMENT

versus

KALLYDAS CHUCKERBUTTY (No. 1,) RAMCHAND CHUCKERBUTTY* (No. 2,) BHYRUB CHUCKERBUTTY* (No. 3,) AND RAMNATH CHUCKERBUTTY* (No. 4.)

24-Pergunnahs.

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Case of KALLYDAS CHUCKERBUTTY and others.

Prisoner released. The confession of the prisoner being in material point contradictory and opposed to evidence on oath on the

CRIME CHARGED.—1st count, wilful murder of Gopal Dutt on 3rd June, 1856; 2nd count, accessary after the fact of the said murder; 3rd count, privity to the said murder.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 7th July, 1856.

Remarks by the additional sessions judge.—In the village of Gokurna, reside the four prisoners, who are brahmins. No. 2, is the father of the other three, but the son "Kallydas," prisoner No. 1, is evidently the real head of the family from superior will and intellect. The third prisoner, "Bhyrub," is a school-master in the neighbouring village Ramchundernuggur.

* Acquitted by the sessions judge.

About twelve months ago the deceased, Gopal Dutt, came to Gokurna and set up there as a school-master. From his profession there was at once rivalry and ill-feeling between the deceased and the prisoner, Bhyrub, and his family, but there was soon besides another much greater cause for dislike. The deceased was by all accounts a great intriguer with women, and amongst the several women he seems to have intrigued with, was Tarramonee, sister of the prisoner Kallydas, a widow. He probably visited her at her father (the prisoner, Ramchand's house,) on the night of the 3rd June last, the last night of his life.

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record, and no corroborating evidence of the truth of this portion of the confession being on the record, the confession itself even as against the prisoner confessing, could not, in the opinion of a majority of the Court, be accepted as *true*.

The deceased lodged at the house of the witness, Govindchunder, No. 6, himself a Chuckerbutty brahmin, but though not on terms of enmity by no means on friendly terms with the prisoner's family. Govindchunder, his wife (witness No. 8,) and his son (witness No. 7,) slept that night inside their house, the deceased, it was supposed, sleeping in the verandah. A little before morning on the 4th June, voices outside were heard by the inmates, and it was supposed some one was stealing their jack fruit. They came outside and found four men running off from the verandah. They challenged the strangers, and it is affirmed by one of the witnesses the two prisoners, Kallydas and Bhyrub (Nos. 1 and 3,) were recognized by their voices when replying to the challenge, but by the other two witnesses,* Kallydas, prisoner only. It was subsequently ascertained the deceased was lying dead in the verandah on his bed, for at the time it was not suspected what was the real object of the stranger's visit.

* Nos. 6 and 8.

Notice of deceased's death was conveyed to the deceased's brother, residing at a village some miles distant by the witness, Kedarnath, No. 7, but without any communication of the particulars, or of any suspicion formed by the witness, his father and mother, of the death having been a violent one Notice of deceased's death was also on the morning of the 4th, given to the burkundaz in charge of the pharee at Mathaneah, a mile only from Gokurna, by the chowkeedar, Ramchand, witness No. 10. The phareedar, witness No. 17, lost no time in proceeding to Gokurna to see the body, and after seeing it, still a few hours only after death, he again lost no time in proceeding to the thannah and communicating to the darogah the suspicious appearance it presented. There were marks of violence and a swelling about the throat; the skin on the knees and elbows was abraded, and blood was visible from the mouth or nostrils, or both, over the breast down to the waist. The darogah despatched the jemadar, witness No. 16, to make enquiries. He too saw what the burkundaz, Hosseinooddeen had seen, and found the same conclusion, but could discover nothing. On this,

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the darogah himself started off for the place, and on the 5th June, within sixty hours of the deceased's death had commenced and completed his investigation.

To him the witnesses told a different story to what they have told me, and in one instance differing from that detailed to the magistrate. No. 7 said he and his father had challenged the party from inside the house, and on coming outside into the verandah saw and recognized all the four prisoners, and he said the same to the magistrate. No. 6, the father, Govindchunder the same. But the mother, witness No. 8, though with the other two throughout, declared to the darogah she saw no one, but that from the inside of the house she recognized the voice of the 4th prisoner, Ramnath, and *then heard four men running away*, while before the magistrate she deposed she came outside and *saw all the four prisoners running away, none of whom were challenged or uttered a word.* That the account given before me by all these three chief witnesses is besides being the only consistent one, most probably the true one, will be shown hereafter by the strongest corroborative proof.

Witness No. 9, declares he saw that morning four persons carrying a body, alive or dead he cannot say, towards Govindchunder's house, one of whom gave his name as "Kallydas." Witness No. 10, declares *he* met that morning four men returning from the direction of Govindchunder's house empty-handed, two of whom *he* ascertained were "Kallydas" and his brother, "Bhyrub" (prisoners Nos. 1 and 3.) But not only do these men not explain what induced them to walk about the village half an hour before day-break, but witness No. 9, admits he never mentioned the circumstances until questioned the next day by the darogah; while the evidence of witness No. 10, is altogether evasive and unsatisfactory, and he too said nothing about it when he reported the deceased's death at the pharee, witnesses Nos. 11, 12 and 13, speak to the liaison between the deceased and the prisoner, Ramchand's daughter, Tarramonee, whom they all pronounce a very unchaste person; and the witness No. 8, had previously said, this Tarramonee was always "looking up" the deceased at her house. The search for bloody clothes, &c., in Tarramonee's apartment resulted in my opinion in nothing tangible. I can find no blood on the articles produced. The corpse when it reached the sudder station was too decomposed to be examined.

The prisoner "Kallydas" made a full confession to the magistrate, and he named in his confession several persons, but not any of his fellow-prisoners. I am inclined to believe his confession, at all events as regards his own share in the murder, and the cause for it, the deceased's intrigue with, amongst other women, the prisoner's widow sister. The deceased was evidently murdered

Witnesses Nos. 4 and 5.

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away from home probably while in the society of this Tarramonee, at her father, the prisoner Ramchand's house, the prisoner Kallydas instigating and directing the act, the corpse being then dragged and carried to Govindchunder's verandah, where it was left a little before morning on the 4th June in the state it was afterwards discovered. I think, in concurrence with the law officer, the evidence insufficient against the prisoners Ramchand, Bhyrub and Ramnath, Nos. 2, 3 and 4, whom I acquit, but I convict, also in concurrence with the law officer, the prisoner Kallydas, No. 1, of the wilful murder of the deceased Gopal Dutt, on the direct evidence supported by his own free confession, and taking all the circumstances of the case into consideration, I beg to recommend that he be sentenced to imprisonment for life with hard labor in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. S. Torrens and C. B. Trevor.)

Mr. J. S. Torrens.—I do not see any reason to throw aside the confession of the prisoner in this case. It is true that much of the oral evidence, which has been adduced for the prosecution is not trustworthy, and that the investigation by the police as well as their conduct after the body of the deceased was found, where it appears it was placed, in the house of Govindchunder Dhur Chuckerbutty, have originated considerable confusion, but that the murder took place elsewhere and that the body was afterwards placed where it was, the prisoner having taken the part which he admits, I hold to be established on the confession. The mere circumstance, therefore, of his criminating others along with himself does not vitiate his confession, which I believe to be true to the extent to which it goes. The evidence as to the murder having been otherwise committed as related by the witnesses, Nos. 6, 7 and 8, which is opposed to the confession, I wholly reject; as had the murder been committed as they describe, it could not have been found placed as it was in the bed in the verandah, without other traces on the spot. The condition in which the body was, as stated by the witnesses to the *sooruthal*, corroborates the account given in the confession of the prisoner, and as I credit this to the extent it implicates himself, and believe it to be supported by the circumstantial evidence as to the intrigue of the deceased, and the cause of the prisoner's resentment, and that of the rest of the family, I would convict on his confession, according to the finding of the judge and his law officer, and sentence him as recommended.

Mr. C. B. Trevor.—Four prisoners were committed in this case by the magistrate of the 24-Pergunnahs, on the strength of the evidence of the witnesses, Nos. 6, 7 and 8, as given before him, and the confession of prisoner No 1, made before him.

The sessions judge considered the evidence of the witnesses

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against prisoners, Nos. 2, 3 and 4, insufficient, but he is "inclined to believe," the confession of prisoner, No. 1, as far as regards his own share in the murder, and the cause for it, viz., the deceased's intrigue with, amongst other women, the prisoner's widow sister, the sessions judge therefore in concurrence with the law officer convicts the prisoner, No. 1, of the wilful murder of the deceased Gopal Dutt, on the direct evidence supported by his own free confession, and recommends that he should be sentenced to imprisonment for life with hard labor in transportation.

That the deceased came to his death by violence seems, to me, from the evidence of witnesses, Nos. 16 and 17, and also that as to the state of the body when the inquest was held on it in the mofussil, to be undoubted; the only question remaining then is under what circumstances, and by whom was the violence inflicted which led to the death of Gopal Dutt.

Witnesses Nos. 6, 7 and 8, before the magistrate, depose to the effect, that the deceased, on the night in question, slept in the verandah of their house, that they, from the inside, heard a noise, and on coming out recognised *all the four prisoners* committed by the magistrate, and immediately after discovered the deceased lying dead in the verandah. Before the sessions judge, they depose that a little before dawn on the night of the occurrence they heard voices outside their dwelling; that coming out to see what was the matter, they saw *four men* running off, that they challenged them, and witness No. 7, affirms that he recognised Kallydas and Bhyrub, prisoners Nos. 1 and 3, by their voices, whilst witnesses Nos. 6 and 8, recognised only Kallydas by his voice.

Witness No. 9 deposed before the magistrate and sessions judge to the effect, that a little before daylight he was going in search of employment to the cutcherry of Peearee Mundul, and saw *four men;* that he challenged them, and that he heard from one of them who called himself Kallydas that they were carrying the deceased, who was drunk, to the house of witness No. 6, Govindchunder Chuckerbutty.

Witness No. 10 is the chowkeedar of the village of Gokurna. He first informed the police of the death of Gopal Dutt, but mentioned there nothing regarding his suspecting or seeing any one on the night in question, subsequently he gave evidence to the effect that shortly before dawn on the night of the occurrence he saw *four men*, coming from the direction of the house of witness No. 6, that he challenged them and recognised prisoner No. 1, by his voice.

The prisoner No. 1, in the mofussil, denied the crime laid to his charge, the day following that on which his defence had been taken, whilst he was still in the mofussil he, in answer to a question put by the darogah, said that he would say what he had to say to the

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magistrate. On being forwarded to Allipore, he there confessed, that he was an accomplice with *many others* (whose names do not appear in the evidence,) in the murder of the deceased; that they murdered him in consequence of his numerous amours in the house of *Govind Ghose*, with one of whose relatives the deceased had an intimacy; that they then threw the corpse into the verandah of the house of Govindchunder Chuckerbutty, and went to their home. Before the sessions judge the prisoner pleads *not guilty* to the charge laid against him.

It appears to me, that in a case like the present, in which there is evidence on oath on the record, though liable to strong suspicion which *in material points contradicts or is opposed* to the confession of a prisoner, it is necessary before accepting that confession as *true*, even against the confessing prisoner himself, to have some evidence corroboratory of it, upon that portion of the confession which is not opposed by evidence on oath in the case; such evidence is not forthcoming in the present case and in fact the evidence produced *subsequently* to the confession throws discredit over the entire confession.

As then the confession which was given after a previous denial is opposed to the evidence on the record, as to the parties who committed the murder with the prisoner, and is not corroborated by any evidence as to the place and mode in which it was committed, I am of opinion that it cannot be accepted as a *true* confession even against the confessing prisoner himself. I would consequently order his immediate release.

Mr. H. T. Raikes.—The principal witnesses for the prosecution are the three inmates of the house in which Gopal Dutt, the deceased, lodged. Their account is that on the night of the murder they heard voices and whispering in the verandah, recognizing in reply to their challenge, the voices of Kallydas and Bhyrub, and on going outside they beheld the four prisoners going off in the direction of their own house; they then called to Gopal Dutt, who returned no answer and on raising the musquito curtain of his cot, observed him, as they supposed, to be fast asleep. A light was then procured and on again examining Gopal Dutt they found he was dead, and from the marks of violence visible on his person, felt convinced he had been murdered, in consequence of his intrigue with Tarramonee, and that the prisoners after taking his life had brought his body and laid it in his cot as discovered by them.

This is the purport of their statements to the darogah on the 15th of June; but its effect, as a true account, is greatly impaired by the fact that notwithstanding the strong grounds they had for believing that Gopal Dutt had been murdered by the prisoners, who must moreover have appeared to them to have intended to throw suspicion on themselves, they summoned the chowkeedar, and told him, Gopal Dutt had died of cholera, des-

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patching him to the thannah with that account of his death; nor did they attempt to assign any other cause for it, when the burkundaz and jemadar subsequently inspected the body, and evidently gave vent to their own suspicions on seeing the marks of violence so apparent upon it.

Under these circumstances, I wholly reject the evidence of these three witnesses, and attribute the discrepancies and contradictions, in their subsequent depositions, to the absence of all truth in their statements from the first.

Ramchund Chowkeedar's account of having seen the four prisoners in the road between their own house and Govindchund Chuckerbutty's, at a time coinciding with the above witnesses' allegations, and of their having been met by Nurro Hari Gyan, carrying a man either dead or drunk, is also open to question, as made known to the darogah only after the lapse of four days and as wearing the appearance of statements got up by the police to support the main body of evidence against the prisoner.

Setting aside then the above evidence on the part of the prosecution, which seems also to have been viewed by Messrs. Torrens and Trevor, in the same light as I have regarded it, there is nothing to connect the prisoner Kallydas, with the commission of the crime except his own confession; on its credibility then, the whole case rests.

There is reason to believe that this confession, whatever motive may have prompted it, was voluntarily tendered to the magistrate. But we are not the less bound to consider whether it is worthy of credence.

Its evident purport is to implicate others than the persons accused, members of the prisoner's family; and against these persons, there is not a particle of proof. Their connection with the murder then as alleged by the prisoner, has not, as far as this record goes, a shade of probability to support it. Neither can I point to a single corroborative circumstance, in proof of the prisoner's guilt. It was so obviously necessary that he should make his account of the disposal of the body in the cot, tally with the notorious fact of its being there, that I cannot regard that circumstance as corroborative. He, with others could also easily account for the body being so found, by the belief that it was so placed after the murder was committed, and by the perpetrators, to baffle detection, but these facts can lead, in my opinion, to no safe conclusions as to the truth of his statements. It is unfortunate that no attempt was made to test the truth or falsehood of his account, either by requiring from him some proof of his statement, or taking other measures; but as the matter stands, it would be most unsafe to place reliance on this man's confession, simply because it implicates himself.

I therefore concur with Mr. Trevor, in directing his release.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GREEDHAREE DASS BYRAGEE.

Beerbhoom.

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Case of GREEDHAREE DASS BYRAGEE.

The appeal of the prisoner, convicted of arson, was rejected.

CRIME CHARGED.—Arson, committed in the house of Jharoo Doss Byragee.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Moulvee Fyzoollah, law officer, with full magisterial powers, Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 21st May, 1856.

Remarks by the sessions judge.—On his return from a visit to a sick relative, when near his house, a man, by name Jharoo Dass, observed the prisoner ignite a straw twist and set fire to the thatch of his house. He and another man, who was with him, rushed forward and after some resistance, with the aid of other villagers, seized him; however during the confusion of the fire, the defendant managed to escape and was not apprehended till some days after; some property was destroyed, but no lives were lost.

At his first seizure, the defendant allowed his guilt, and begged to be pardoned; before the lower court, he denied and tried to prove an "*alibi*" without success; before me he simply denied the fact, saying that the villagers had got up the case on account of his previous bad character; and declined to call his witnesses.

This man had been in jail no less than five times for various offences, in the aggregate twelve years. The jury, with whom I concur, have found him *guilty*. I sentence him to seven years and two years in lieu of stripes, in all nine years' imprisonment with labor in irons.

I observe in the calendar that a number of witnesses are put down in the column headed "witnesses to apprehension" when, in fact, they were not so, being only witnesses to the first seizure, and there are many more men sent in as witnesses than were required.

One witness states that he heard the defendant was caught in concealment, by a chowkeedar, I think the magistrate should enquire into this, and if true, take some favorable notice of the man.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner declined to have the

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witnesses cited to his defence examined at the sessions court; and in his petition of appeal urged, what he never stated before, that he could not have set fire to the prosecutor's house, because his own was burned with it. Other discrepancies are apparent in his statements at the different stages of the enquiry. We reject the appeal.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS., *Officiating Judges.*

GOVERNMENT AND MUDDOO AWRUTH

versus

KARTIC MUNDUL.

Moorshedabad. 1856. September 20. Case of KARTIC MUNDUL.

Prisoner convicted on his own confession, both before the police and the magistrate, corroborated by other evidence of wilful murder, and sentenced capitally, as recommended by the sessions judge.

CRIME CHARGED.—Wilful murder of his, prisoner's, son Sreeram Mundul, the husband of the prosecutrix.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 2nd August, 1856.

Remarks by the officiating sessions judge.—This is a case of murder of a son by his father, on account of ill-feeling, in consequence of the father's having criminal connexion with the son's wife, and occurred on the 29th June last.

The prosecutrix said she is twelve years old, (but appears to be about sixteen) and that she heard the prisoner, Kartic No. 4, her father-in-law, had killed her husband, Sreeram, the prisoner's son, and she therefore charged him with the murder. She was absent at the time, and did not see the murder committed; and the prisoner was in the habit of taking liberties with her person; she had told her husband of it four months ago, and the prisoner and the deceased used to quarrel on this account.

The prisoner pleads *not guilty*.

Witness No. 1, Amrit Chokra, a boy of about ten years old, (though he says he is twelve) an intelligent lad, and who gave his evidence clearly and distinctly, said he knew that it was wrong to tell a falsehood, and stated that one morning the prisoner, Kartic (his father) was taking him away from the house, where they both dwell with the deceased (his brother) Sreeram, on which the deceased called out to his father that he would not allow the boy to go, and also demanded some money of the prisoner before his departure, on which the prisoner put his hand to the roof and seizing a sickle that was stuck there, struck the deceased from behind, when he was looking another way,

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one blow with the sickle on the side of the throat; that the deceased fell down crying: "I am struck," and died immediately; that he rushed out of the house calling out that his father had killed his brother, on which the prisoner said to him "Be silent, or I will kill you;" that the prisoner and deceased used to quarrel because of the prisoner taking liberties with the prosecutrix, deceased's wife, and that when the deceased asked for the money, he gave the prisoner a shove which made him reel, and that after sitting a moment, the prisoner took the sickle and murdered the deceased; and that there was no *lattee* in the deceased's hands or in the house.

Hungsraj Chowkeedar.

The witness, No. 2, being told to go and see what was the matter; went to the prisoner's house and found the body of the deceased on the ground with blood flowing from it, and saw the prisoner (who sat down when he saw the witness) with the bloody sickle on the ground; that he took him to the thannah and that prisoner told the darogah he had committed the murder.

Witness No. 3, Ramlall Mundul.

Heard witness, No. 1, Amrit call out "Father is murdering my brother;" entered the house; saw the deceased groaning and die immediately; heard the prisoner tell Amrit, witness No. 1, to be silent or he would kill him also; saw the prisoner standing there with the bloody sickle in his hand.

Wit. No. 4, Madhub Mundul.

Saw the dead body of the deceased on the ground and the prisoner standing by with the bloody sickle.

Wit. No. 3, Ramlall Mundul.
" " 4, Madhub Mundul.
" " 5, Ramsunkur Mundul.
" " 6, Bhagbut Mundul.

Saw the *sooruthal* of the body and deposed to a deep wound on the left side of the neck.

Wit. No. 7.

The civil surgeon deposed to the above wound and that it caused the death of the deceased.

Wit. No. 3, Ramlall Mundul.
" " 4, Madhub Mundul.
" " 8, Nuffer Chundur.
" " 9, Brojokissore Doss.

Witnessed the prisoner's confession before the darogah, which was given voluntarily and clearly.

Wit. No. 10, Lallbeharee Bural Mokhtar.
" " 11, Mahomed Amjad Mokhtar.
" " 12, Gholam Hosein Mokhtar.

Witnessed the prisoner's confession before the officiating magistrate, which was given voluntarily and clearly.

Wit. No. 13, Meechoo Mundul.

Said that being told by witness No. 3, Ramlall, he went to the prisoner's house, saw the body of the deceased on the ground, and the prisoner standing with the sickle in his hand.

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Was passing the house; heard the deceased and the prisoner having a quarrel; saw the deceased seize the prisoner by his clothes, both were excited; both went in; heard No. 1, witness Amrit cry out, "Father is killing brother;" that the deceased had no *lattee* in his hands, and that the prisoner threatened to kill Amrit if he was not silent.

Wit. No. 14, Komul Bewa.

The prisoner confessed before the darogah and before the magistrate; before both he said that on account of his having "*ashnai*" with the prosecutrix, the villagers had determined to turn him out of the village; (this fact is proved by the witnesses, Nos. 3, 4, 6, 13 and 14,) and that on his going out that morning, the deceased had some words with him about taking away the boy, Amrit, and not paying the price of a cow, seized him by the throat and wanted to beat him with a *lattee;* that there was a sickle near, so he determined to kill him, and struck the deceased with it.

Before this court, he denied having committed the murder, said his son, Amrit, had been tutored to give evidence; and that the witnesses, No. 3, Ramlall, No. 9, Brijo, and one Rhebotee had murdered the deceased, and that he confessed before the magistrate because the burkundaz told him to do so. He brought forward no evidence to prove these statements.

The jury,* who tried this case with me, could not agree in their verdict. The first named, the pundit of this court, has given a most absurd verdict and attributes the death of the deceased to "accidental murder approaching to a deliberate one" because the prisoner had no intention of murdering the deceased, till insulted and irritated by him, he lost his self-possession and struck the blow in a fit of passion. The other two convict the prisoner of wilful murder, in which verdict I concur.

* Shrishchunder Bidyarutna.
Umbicachurn Gangoolee, vakeel of this court.
Gobindokant Bidyabhoosun, native gentleman.

The inference from the prisoner's confessions is, that, irritated with the conduct of his son, as he himself was leaving the house and burning with shame (perhaps) at the unnatural crime he had been guilty of with his daughter-in-law, he in a moment of desperation committed the murder, and he attempts to explain it by saying his son wanted to strike him with a *lattee*, but this point is clearly disproved by the evidence of his remaining son Amrit, No. 1, the only eye-witness, and of Komul Bewa, No. 14, who was outside the house at the time. Convicting the prisoner therefore of this wilful murder, and considering it to have been a wanton and unnatural one, without a single extenuating circumstance, I feel it my duty to recommend that the prisoner be sentenced to suffer death.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The circumstances detailed in this case are of a most revolting and deplorable description; the murder of a son by the father originating in such a cause as that assigned. The confessions of the prisoner before the police and the magistrate are complete, and the evidence of the boy Amrit, witness No. 1, son of the prisoner, and younger brother of the deceased, fully supports these confessions and describes the manner in which the fatal blow was struck. The evidence of the civil surgeon, as to the depth and nature of the wound, leaves no doubt as to the intent with which the deadly blow was dealt. We find prisoner guilty of wilful murder, and sentence the prisoner capitally as recommended by the sessions judge.

Shahabad. 1856. September 20. Case of HURDEAL SINGH.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND DAVEE TELEE

versus

HURDEAL SINGH.

Conviction affirmed with reference to the evidence against the prisoner in which he was named from the first.

CRIME CHARGED.—Being an accomplice in the wilful murder of Rugbur Telee, nephew of the prosecutor.

CRIME ESTABLISHED.—Accomplice in the culpable homicide of Rugbur Talee, nephew of the prosecutor.

Committing Officer.—Mr. H. C. Wake, joint-magistrate of Saseeram.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 10th July, 1856.

Remarks by the officiating sessions judge.—The circumstances of this case are detailed at length in the abstract statement No. 6, for the month of November, 1855, a reference to which is made in the abstract statement relating to the same case for January, 1856, the prisoner is mentioned by the witnesses Nos. 1, 3, 4 and 5, as holding the deceased whilst he was being beaten by Bunsee Singh, from the effects of which he died; in his defence he states that he was at a village three quarter of a *coss* distant from the place when the deceased was beaten.

The *futwa* of the law officer convicts him of being an accomplice in the culpable homicide of Rugbur Telee in which I concur. I therefore sentence him to imprisonment for four years and to pay a fine of fifty rupees within fifteen days, in default of which, he is to labor until such be paid.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J.

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Colvin and J. H. Patton.) The prisoner was named originally as having been concerned in the assault, his two accomplices in which have already been convicted; and the appeal of one of them dismissed. See page 657 of Nizamut Decisions for the present year, dated 1st April. We reject the prisoner's appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND ROPHIK KHAN

versus

TARIKOOLLAH SHEIKH.

Jessore.

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Case of TARIKOOLLAH SHEIKH.

A previous conviction of affray does not necessitate the commitment of a prisoner subsequently charged with burglary.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, Rophik Khan, and theft of property valued at (Rs. 1-12,) one rupee and twelve annas, on the night of the 24th of February, 1856, corresponding with 13th of Falgoon, 1262, B. S.; 2nd count, having had in his possession knowingly a portion of the stolen property.

CRIME ESTABLISHED.—Burglary and theft of property valued at Rs. 1-12, and of having had in his possession knowingly a portion of the stolen property.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 8th July, 1856.

Remarks by the officiating sessions judge.—The complainant states that he was asleep in his house, on the night of the 13th Falgoon last, corresponding with the 24th February, 1856, when hearing the village chowkeedar, (witness No. 1,) calling out to him, got up hastily and found a man, the prisoner, creeping out, legs foremost through a hole that had been made in the wall of his house. With the aid of the chowkeedar outside, the prisoner was arrested, and outside about a *hât* from the house, were found some brass eating and drinking utensils put together, which the complainant and his witnesses recognize as his property. The prong of a plough was found also close to these articles, and this is recognized as the property of the prisoner, and is conjectured to be the instrument with which he burglariously effected his entrance into the prosecutor's house.

The chowkeedar, (witness No. 1,) states he was going his rounds and hearing some dogs bark in the direction of the complainant's house, he resolved to go past there. On approaching

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the house his attention was excited by hearing the tinkle of brass utensils being put together. He then saw a pair of legs protruding from a hole in the wall and seeing that a burglary had been committed, he called out with all his might to the complainant to awake him and then clutched hold of the pair of legs which he held fast until the prisoner was dragged out.

He was immediately taken to the police thannah, but the police mohurrir who received the complaint, reported he had placed the prisoner on bail as there was suspicion of the truth of the case. The magistrate on reading the report, ordered the parties to be forwarded to his court and ultimately committed the prisoner under the provisions of Clause 2, Section II. Regulation XII. 1818, the prisoner having already undergone a sentence on a charge of affray with murder in the Pubna zillah.

The prisoner pleads *not guilty* and that the charge is instituted out of malevolence and that he was arrested while in his own house. He has called twelve witnesses to substantiate his defence, but with the exception of witness No. 19, the remaining parties were unable to state that they knew of any enmity existing between the prisoner and the complainant's father. None certify to the arrest of the accused being in his own house. It appears clear to me that the police mohurrir was guilty of very scandalous partiality in reporting that there were grounds for suspecting the truth of the case, and that he has availed himself of the opportunity afforded in Circular Order No. 138, volume 3, in furnishing only a summary of the depositions of witnesses, to introduce as substance of the evidence of each witness, statements never made by them. The evidence of all the witnesses who gave their depositions in this court, agree with that given before the magistrate's court.

The trial was conducted with the aid of a jury, under the provisions of Regulation VI. 1832, the majority of whom find a verdict of *guilty*.

I fully concur in the verdict, and sentence the prisoner to imprisonment with labor in irons for (5) five years.

The trial was postponed from the 26th June to the 7th July, to secure the attendance of the witnesses Nos. 18 and 19, whose depositions, the prisoner particularly desired might be taken.

The magistrate has failed to attend to paragraph 6 of Circular Order No. 220, dated 27th January, 1837, there not being any certificate in the English language on the depositions taken in his court. His attention will be called to the omission.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) With reference to the decision in the case of Bengah Sheikh, page 28, of the Nizamut Adawlut Reports decided on the 7th January, 1854, the magistrate should have disposed of this case himself. We see no reason to doubt the prisoner's guilt, but as the magistrate could only have

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passed a sentence of three years' imprisonment, inclusive of one year in lieu of corporal punishment, we reduce the sentence to two years' imprisonment with labor in irons. As there are no aggravating circumstances attending the case, we do not extend the sentence in lieu of corporal punishment.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, Esqs.,

Officiating Judges.

Dacca. 1856. September 22. Case of BHEEKOORAM ROHA and others.

GOVERNMENT

versus

JURREEP JAWARDAR, (No. 1,*) BHEEKOORAM ROHA, (No. 2,) BUDDUNCHUNDER SICKDAR, (No. 3,) SHEIKH TENGUR, (No. 4,) EKABER MOLLAH, (No. 5,) SHEIKH DEANUT, (No. 6,†) SHEIKH ADOO, (No. 7,†) ALLUM, (No. 8,†) HARAN BYATEE, (No. 9,†) JUNNOOLLAH MOLLAH, (No. 10,) MANOOLLAH, (No. 11,†) AKOOL MUNDUL, (No. 12,†) TUCKEE MAHOMED, (No. 13,†) SEKUNDER MOLLAH, (No. 14,) RUTTON MUNDUL ALIAS CALLA RUTTON, (No. 15,) AND GUL MAHOMED ALIAS GOEE JAWARDAR, (No. 16.†)

Evidence exaggerated on some points may be received against prisoners, if as far as regards them, it is corroborated by *other trustworthy evidence;* the depositions of the parties in this case corroborate the statement of the chief witness against the prisoners, being not themselves trustworthy, the crime of riot with murder, of the committal of which there was clear proof, was not, in the opinion of the Court, brought home to the prisoners, they were therefore acquitted.

CRIME CHARGED.—Riot attended with the murder of Gobind Paurey, acting burkundaz of thannah Belgachie and Sheikh Kamaldee.

Committing Officer.—Mr. S. F. Davis, officiating joint-magistrate of Furreedpore.

Tried before Mr. R. S. Scott, officiating sessions judge of Dacca, on the 26th May, 1856.

Remarks by the officiating sessions judge.—This outrage occurred on the 1st August, 1855, and the joint-magistrate was, on the spot pursuing his investigation, on the 4th idem, it was however, committed to the sessions court for trial by the officiating joint-magistrate Mr. Davis. He describes the general features of the case as it then appeared to him in the following words. "A case under Act IV. of 1840, was pending between the parties (viz. Mr. Roberts, and Meer Allee Ashruf,) at the time that the riot occurred, and it appears that considerable ill-feelings had existed for some time from various causes.

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* Dead. † Acquitted by the lower court.

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"The immediate cause of the riot was the collection of an armed force for the purpose of forcibly carrying off the crops of a portion of the land under dispute.

"It appears in evidence that some of the police, who were stationed on the spot to keep the peace, saw a large body of reapers and armed men proceeding towards the land, and the police jemadar called upon one of the principal persons, warning him not to create a disturbance. It would seem that a small body of persons on the part of Meer Allee Ashruf, had also come to cut the crop, but that they were driven away by the stronger party, who carried off the "*dhan*," and then attacked the house of Ramcoomar Mujoomdar, near whose house the riot occurred. Gobind Panrey, a burkundaz, appointed to keep the peace, resisted the attack with several others, Gobind Panrey cut off the hand of Sheikh Kamaldee, a ryot of Mr. Roberts and was himself speared to death by Jurreep Jawardar, also a ryot of Mr. Roberts. Others were wounded but they have not been found. A counter-charge was brought by the accused, which was considered unworthy of credit by Mr. Raikes for the reasons detailed in his proceeding in which I concur."

The case was tried at the sessions by the late judge of Dacca, on the 3rd, 4th and 5th December, 1855, who remanded it to the officiating joint-magistrate for further investigation, as on the evidence then before him, he was unable to dispose of the charge in a satisfactory manner.*

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* *From the sessions judge of Dacca, to the joint magistrate of Furreedpore, No.* 14 *A. dated the* 5*th December*, 1855.

I have the honor to return the calendar and record of the charge of riot attended with murder preferred against Jureep Jawardar and others.

That the burkundaz Gobind Panrey, and one Kamaldee were killed and two persons, if not many more, wounded, in a riot or affray such as described, cannot be doubted, but the affray or riot was in the first instance, promoted by Meer Allee Ashruf, and Ramcoomar Majoomdar, the last-named, a witness in the case. On referring to the cases tried in your Court and in appeal under Act IV. of 1840, it appears that on the 9th February last an order was passed to put Messrs. Jardine, Skinner and Co., in possession of certain lands and from the statement of your predecessor made on the calendar, it appears that possession of a portion of the lands so decreed was again disputed.

The ryots of Jardine, Skinner and Co., being in possession in February, and afterwards undoubtedly sowed the fields, when in Assar following, Ramcoomar Majoomdar, gave a real or nominal ijara of the village to Meer Allee Ashruf, who attempted to oust Jardine and Co., from the land decreed to them, and caused the case to be again brought under Act IV. of 1840, without of course any other result, than the confirmation of the former order.

On the 1st August, Jardine and Co.'s ryots attempted to cut the rice but met with some opposition from the police stationed in the village, to preserve the peace, and the appearance of a few persons said to have been *latteeals*

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On the 31st December, 1855, the officiating joint-magistrate reported that he had not been able to procure further evidence

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of Meer Ally Ashruf. The rice was, however, cut and carried off, and a party of Jardine and Co.'s people went to the village, where Ramcoomar Majoomdar, (witness No. 1,) resided. Here, according to the witnesses Nos. 1 to 14, a most unprovoked attack was made on the premises of Ramcoomar, and the burkundaz Gobind Panrey, who interfered to prevent it, killed, as was also Kamaldee on the part of Jardine and Co., and two persons wounded.

The evidence of the above witnesses is, however, open to much suspicion. There seems no reason for their having been assembled on the spot, unless to defend the house which they did not attempt to do. They are all ryots or dependents of Ramcoomar, most of them wish to show an unprovoked attack on the house, and they generally profess ignorance of what had taken place that morning in the rice-fields which is most improbable. They say, Prannath Bose was one of the leaders of the party, but this person is proved by the oaths of two European witnesses to have been at the time engaged in his duty at the Balliakandy factory. They differ as to whether the women of the family were in the house or not at the time the disturbance occurred. Ramcoomar, (No. 1,) says they were sent off some months before. Gorye, (No. 4,) his servant, says the day before. Meedha, (No. 2,) also a servant, says they were in the house, and Kuramdee, (No. 3,) a *hat*-bazar servant professes ignorance, although he must have known for how many persons food was required. The cause of the quarrel also is misrepresented, as an attempt of Jardine to obtain possession of the talook or to enforce cultivation of Indigo, while, as if by tacit consent, scarcely any mention of Meer Ally Ashruf is made.

On the other hand the witnesses Ramzan and Fukeer Mahomed, (Nos. 13 and 14,) state, that about sixty men of Jardine and Co., were passing near Ramcoomar's house, when they were met by fifty of Ramcoomar's people, and that on his interference, the burkundaz was killed. This may show all the provocation to have been given by Ramcoomar, or Meer Ally Ashruf, for, by the admission of Ramcoomar's own witnesses, the party may have been returning to their homes by the direct road from the rice-fields.

The police give their evidence with partiality, for it is only by cross questions that they name Meer Ally Ashruf, as a party to the case. It appears too that Mr. Roberts had previously preferred a charge against the jemadar Golabdee.

It is stated by several witnesses that some persons of respectability reside near the spot where the disturbance occurred. I request you will search for these and many others who may have personal knowledge of the circumstances of the case, and after making them witnesses, report the result to me, as unless some further and trustworthy evidence be procured, it is impossible to dispose of the charge satisfactorily.

In the mean time the prisoners Jureep Jawardar, Bheekooram Roha, and Buddunchunder Sickdar, (Nos. 1 to 3,) will remain in jail; the others Nos. 4 to 16, will have the option of giving two sureties of 50 Rupees each, for their appearance at the sessions when called on.

You will please to dismiss from his appointment Bawan Shureef burkundaz (witness No. 23.) This person was ordered to assist Gobind Panrey, but instead of doing so he went to the village of Hurripal, because, as he says, he was told to do so by a woman. Had he obeyed orders, the affray might possibly have been prevented, or at least an unprejudiced witness would have been present.

for the prosecution, but that he had found cause to change the opinion which he had first entertained about the origin of the

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From the officiating joint-magistrate of Furreedpore, to the judge of Dacca No. 364, Camp Ramdee, dated December 31st, 1855.

With reference to your letter, No. 14, A., dated the 5th December, returning the calendar and record of the charge of riot attended with murder, preferred against Jureep Jawardar and others, and directing me to search for further evidence and report the result to you, I have the honor to report as follows.

It appeared to me that a local investigation was absolutely necessary to enable me to come to any decisive conclusion as to the merits of the case. I accordingly came to the scene of the occurrence on the 28th instant, and having now concluded the investigation, I have the honor to state that the whole affair appears to me in quite a different light now to that in which it appeared before I had an opportunity of personally enquiring into it.

From the new evidence collected, from the facts and probabilities, and from the local features of the place where the outrage is said to have been committed, it appears evident that an *affray* took place, and not a *riot*, and that the charges of plunder, &c., brought forward by both parties were totally false, and were instituted with the view of throwing the blame on the opposite parties respectively.

The affray occurred thus: The ryots of Mr. Roberts had gone to the rice-fields which were decreed to him under Act IV. of 1840, and had cut the rice, and were returning with it in the direction of the factory, armed with *lattees*, when they were met in the road by a party headed by Ramcoomar, who gave orders to attack them and seize the rice, when the affray took place, and the burkundaz and Kamaldee were killed.

Besides the direct evidence to the above effect, the following circumstances lead to the same conclusion.

1st. There are two roads leading from the land where the rice was cut to the factory, one being a slightly more circuitous route than the other. It is on this road and near Ramcoomar's house, that the affray is said to have occurred, and the reason given for not returning by the more direct road is, that the people were taking the rice to a *mofussil* cutcherry appertaining to the factory on this side of the river, and which was pointed to me close to the road.

2ndly. It is not probable that the factory-people would have chosen that time to attack Ramcoomar's house, encumbered as they were with the rice, and with the chance of having the rice taken from them if the attack were successfully resisted, especially as they might have attacked the house more advantageously some other day, as it is not far from the factory, and they must have supposed that Ramcoomar's people would be on the alert, on account of the rice having been cut.

3rdly. The attack is said to have been made late in the day, in broad daylight. Now, in nine cases out of ten, these things are done either at night or early in the morning before people are stirring.

4thly. The factory ryots having succeeded in reaping and carrying off the crop, their object was gained, and it is highly improbable that they would by looting the house at the same time, give to their proceedings which were otherwise free from blame (for they had a perfect right to cut the crop decreed to the factory,) an appearance of violence and culpability.

I beg to report that none of the parties who were lately committed to the sessions are named by the witnesses since examined by me. Under these circumstances, and as the offence proved is a different one from that

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riot, it appeared to him that instead of it being a riot commenced by Mr. Roberts' ryots in which they attacked the house of Ramcoomar, it had really been an affray that had taken place as they were passing near the house on their way to the factory. He was, however, unable to get sufficient proof to warrant the commitment of the other party for trial to the sessions.

I am of opinion that there was a riotous attack made on the house of Ramcoomar. That it was attended with the loss of life I attribute to the rashness of the burkundaz. He certainly commenced the affray by striking off the hand of one of the other party, by a blow of his sword; on which he was speared. The man who speared him may be considered to have acted in self-defence. I can place no confidence in the depositions of Ramcoomar and his witnesses. Instead of naming the actual perpetrators of the outrage, Ramcoomar could not resist the temptation of endeavouring to ruin his enemy, the Indigo-planter, by implicating all the factory servants in the attack. Quite contrary to all the probabilities of the case, he deposes that Ramburmah Chowdry, gomastah of Sonapore, a factory near the scene of the outrage, Nundcoomar Roy, tehsildar of Sonapore, Seetulchunder Chuckerbutty, mohurrir of Sonapore factory, Issurchunder Paul, headman of Nawpara, Issurchunder Seekdar, the ameen, Bholanath Singh, gomastah of the Balliakandy factory, with one or two more of the factory amlah, were present and gave orders for his house to be plundered.

The other witnesses support him and depose generally to the presence of the prisoners under trial and of the factory sirdar amlah.

The prosecutor and his witnesses have undoubtedly conspired to prove innocent parties guilty, they swear to the presence in the riot of half a dozen penmen who could have had no possible reason to have been personally present. Mr. Roberts deposes on

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for which the former commitment was made, I await your instructions as regards the release of the prisoners from *hajut* and bail, the preparation of a new calendar and record and the commitment of those persons now implicated, on a charge of "affray attended with culpable homicide."

From the sessions judge of Dacca, to the joint-magistrate of Furreedpore, No. 14 *dated the 4th January,* 1856.

In reply to your letter No. 364, of 31st ultimo, I have the honor to state that having called on the prisoners in the case reported to plead to the indictment, I do not consider I have now the power to cancel the commitment.

If you have evidence sufficient to warrant the committal of other persons not yet put on their trial, these may be sent to the sessions, on such charges as you may think it right to prefer.

Any prisoners remaining in jail on the charge tried by me at Furreedpore, may be released on such security as you may think necessary to secure their attendance when called on.

oath that Bholanath Singh and Prannath were at Balliakandy on the day of the affray, and Mr. John Stephenson also gave evidence in favor of Bholanath, and certificates are entered which prove Nundcoomar to be an old man afflicted with diseased testicles, not at all the character to head a band of *latteeals*.

Passing over the want of confidence in the testimony from its having included innocent parties, I will now consider the evidence as bearing merely on the prisoners under trial. The first witness, Ramcoomar, in a written statement given to the police, on the 2nd of August, names the prisoners, Nos. 1, 2, 3, 4, 8, 9, 10, 14 and 15. Two days after, the joint-magistrate took his deposition when he omitted Nos. 8 and 9, and in their place charged Nos. 16 and 5; when the prisoners were confronted with him, he swore to them all. He explains the omission of their names by stating that they were included in the word "and others" with which he had closed the list of prisoners entered in the first made depositions. The witnesses, Ledoo and Keramdee (Nos. 2 and 3,) were not produced in court till after thirteen of the prisoners had been apprehended; they state that they fell wounded at the time of the attack and were carried off by the assailants, they detail how they were hurried from one place of confinement to another, and were at last released at the very time when their evidence, if believed, would have told most fatally against their captors. Had these men really been taken away, they would not have been forthcoming till the case had been finally disposed of. The evidence of the other witnesses contains discrepancies which made the former sessions judge regard it with distrust.

They implicate twenty-five men, of whom sixteen are committed for trial. They are the immediate servants and dependants of Ramcoomar and personally hostile to the prisoners.

This outrage was not perpetrated by hired ruffians; it was the act of the ryots of the place. Every ryot in that part of the district is accustomed to use the *soolfee* or *lattee*, and they were personally interested in the crops. The evidence is not in itself trustworthy and as, from the circumstances of the case, it is just as probable that any of the other ryots on the estate were engaged in that outrage as those committed for trial, I am unable to agree in the *futwa* recorded by the law officer.

The prisoners deny their guilt and bring witnesses to prove *alibis*.

The *futwa* of the law officer acquits the prisoners Nos. 6 to 9 and 11 to 13 and 16, and finds the prisoners, Nos. 2 and 3, guilty of being present or ordering the commission of the riot, and Nos. 4 and 5, 10, 14 and 15, of the crime charged and declares them liable to punishment by *tazeer*.

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I dissent from the *futwa*, so far as regards the prisoners Nos. 2 to 5, 10, 14 and 15, and recommend their acquittal.

The remaining prisoners have been acquitted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We are clearly of opinion, from the evidence before us in this case, that an *affray* attended with the murder of Gobind Panray acting burkundaz of thannah Belgatcha and Sheikh Kamaldee occurred between the ryots of Mr. Roberts, manager of the factory of Balliakandy on the one side, and those of Ramcoomar Mujumdar and Meer Alli Ashruf, on the other.

The prisoners before us are the ryots of the former party; those of the latter have not been committed, no evidence against them being forthcoming, in consequence of the view taken by the magistrate of the case in the first instance; the crime with which the prisoners are charged is riot with murder.

The evidence against the prisoners is confined to that of Ramcoomar Mujumdar and dependents of his; there is not the evidence of one independent person to corroborate their depositions; the police jemadars who were on the spot shortly after the occurrence were unable to recognize any one.

The evidence of Ramcoomar Mujumdar is marked by the exaggerations which characterize the evidence of persons in this country; parties were named by him, who have been proved to the satisfaction of the judge to have been elsewhere on the day of the occurrence; and this fact throws a suspicion over the entirety of the evidence given by him; nevertheless had it, as to the parties now before us, been adequately supported, we should have given it every attention, though in some respects exaggerated and untrustworthy. As, however, the evidence of the witnesses brought forward to sustain the deposition of the chief witness, Ramcoomar Mujumdar, is not in itself trustworthy, we consider the crime of which the prisoners are charged not proved against them; we consequently agree with the sessions judge in his view of the case and acquit the prisoners of the crime laid to their charge.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

GOVERNMENT AND ROSSEE COWRANEE

versus

GOOROOCHURN CHOWKEEDAR (No. 1,) RAJCHUNDER SIRDAR (No. 2,) HARRAN COWRA (No. 3,) KALOO SIRDAR (No. 4,) THAKOORDASS COWRA (No. 5,) MOOCHEERAM COWRA (No. 6,) GOOROOCHURN COWRA (No. 7,) GOPAL COWRA (No. 8,) PURRAN SIRDAR (No. 9,) TARINEE SIRDAR (No. 10,) AND JADUB COWRA (No. 11.)

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Case of GUROOCHURN CHOWKEEDAR and others.

Appeal rejected.

CRIME CHARGED.—1st count, wilful murder of Pitumber Sirdar; 2nd count, riotous attack upon, and wilful murder of the said Pitumber Sirdar; 3rd count, riotously assaulting and beating the said Pitumber Sirdar, which caused his death.

CRIME ESTABLISHED.—Nos. 1 to 11, riotous attack on, and the culpable homicide of Pitumber Sirdar, deceased.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 25th June, 1856.

Remarks by the additional sessions judge.—All the parties live in the village of "Ootur Paunchwee" and there is an ill-feeling of long-standing between the deceased (backed by the witnesses for the prosecution and others) and the prisoner on a point of caste. Deceased's wife eloped from him some years back to live in adultery with another "Cowra" and some refused, while others consented, to continue to associate and eat with deceased afterwards. Subsequently this ill-feeling was aggravated by actions between the parties in the criminal courts, and by inimical acts in certain civil processes, and just before the occurrence, under enquiry, the village had been attacked and the rents made over to a receiver, which, Thakoordass, prisoner No. 5, being a collecting agent of the deceased proprietors, still further embittered matters between him and the ryots.

The evidence for the prosecution proves fully and consistently the following particulars regarding the death of the deceased, Pitumber Sirdar.

On the morning of the 4th May last, the deceased had been fishing till noon. At noon he desired his mother, the prosecutrix, to watch the fish while he went to eat his dinner at Bycant's, witness No. 4. He finished his meal and was leaving the house to go home, when he met on the road the prisoner, Thakoordass, going in an opposite direction. Thakoordass asked

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him for Julkur rent, which the deceased refused to pay, Thakoordass persisted and the other abused him. On this, Thakoordass who was unarmed, and who had started from his home before deceased could have emerged from Bycant's house, screamed out for his friends living close by to come and assault the deceased. All the prisoners and others (of the former Nos. 7 and 8, alone do not live near the place) ran up armed with clubs, on this invitation, when deceased attempted in vain to get away from them. He was pursued and surrounded and the prisoners, Gooroochurn Chowkeedar No. 1, and Rajchunder Sirdar No. 2, dealt him two such blows with their clubs, the first on the skull and the second on the forehead, that his head was *split in two*, and he must have died on the spot. The other prisoners seem all to have struck the body afterwards under the idea that deceased still lived while prostrate on the ground.

There was no time lost in giving notice to the police. Witness No. 3, went at once, and the same day the police arrived in the village and commenced their enquiry. Prisoners Nos. 1, 2, 3, 4, 9, 10 and 11, at the time confessed the assault, and the first four prisoners repeated their confession to the magistrate. These confessions are to the effect, that they (the prisoners) had been drinking at the witness Bycant's, when, for no assigned reason, they all set upon and beat the deceased to death.

Before me all the prisoners plead *not guilty*. Only one, No. 8, has cited witnesses. His witnesses do not establish the desired "*alibi*," and in fact the prisoner before me says he has summoned them to prove another separate matter altogether. All the prisoners who confessed before, now repudiate their confessions, and not one of them attempts to explain how the deceased met his death.

Witnesses Nos. 1, 2 and 3, swear that all the eleven prisoners participated in the matter described in the offence charged. I do not under the circumstances put the less faith in their testimony, because the first witness lived with deceased and was his nephew, and witness No. 3, was his son-in-law. Their testimony was taken immediately, and has been consistent throughout. The other two eye-witnesses, Nos. 4 and 5, each now denounces the one only of the prisoners he did not denounce before to the magistrate, but evidence otherwise consistent and trustworthy must not on that account be set aside or disregarded. There is no proof that the act was premeditated, and I therefore, in concurrence with the law officer, convict all the prisoners of a riotous attack on and the culpable homicide of Pitumber Sirdar, deceased, and sentence them as follows; Nos. 1, 2 and 5, to seven years' imprisonment with hard labor, and the rest to three years' imprisonment with labor commutable to a fine of 25 Rs. each payable on or before 10th July, 1856.

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Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) I agree with the sessions judge that there is no reason to doubt the evidence of the witnesses in this case, which fully establishes the guilt of the prisoners, the petition is rejected.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND SHEOBUX KANDOO

versus

GOALLEE ROUNIAR (No. 1,) RAMSURN ROUNIAR (No. 2,) AND BHEENUK ROUNIAR (No. 3.)

Sarun.

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Case of GOALLEE ROUNIAR and others.

Appeal rejected.

CRIME CHARGED.—1st count, highway robbery and plundering property, belonging to Sheobux Kandoo, plaintiff, valued at Rs. 2-12; 2nd count, having in their possession the said property, knowing the same to have been obtained by highway robbery.

CRIME ESTABLISHED.—Highway robbery and plundering property, belonging to Sheobux Kandoo, plaintiff, valued at Rs. 2-12.

Committing Officer.—Mr. W. F. McDonell, magistrate of Sarun.

Tried before Mr. Henry Atherton, sessions judge of Sarun, on the 7th July, 1856.

Remarks by the sessions judge.—The plaintiff in this case was proceeding to his home on Sunday afternoon, the 25th May, with two pieces of cloth procured at Enautpore, when turning off from the high road between Khairah and Uphour, about a mile from either mouzah, he was seized by the three defendants, who took from him his clothes.

While plaintiff was struggling with them, witnesses Nos. 1 and 2, Purmeshur and Nowah Roy, an intelligent lad, came up on hearing the plaintiff's cries. Purmeshur with the plaintiff secured the prisoners and took them at once to Khaira, where they happened to meet the thannah Moonshee. Both the witnesses say two of the prisoners had *lattees*, though this statement is not confirmed by the plaintiff. The defendants deny the charge, but have no witnesses to call in defence and their own account goes against them. They all belong to the Shahabad district, and each states that he was going to Mooteeharry in search of service.

Goallee says he was in liquor and was seized and knows nothing about the case.

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Ramsurn says, he saw the plaintiff going along with the pieces of cloth, and that taking him for a thief, he secured him, and told him to come with him to Khaira, where the tables were turned on himself.

Bheenuk says he was going along the road when he was seized, where several persons were collected.

The witness, Purmeshur, and the plaintiff are both strong men, and it is not surprising that they should have secured the defendants, who are stated by the police officer to have been in liquor when seized, though this is denied by the plaintiff and Purmeshur. The probability is, that they had been drinking, though this does not alter the character of the crime. The law officer convicts them of the crime charged in the 1st count, and concurring with him, I sentence them to seven years' imprisonment each with labor in irons from this date.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The eye-witnesses, who have given consistent evidence throughout, fully prove the case for the prosecution, which moreover is not met by any defence set up by the prisoners. I reject this appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

TRIAL No. 1.

LUKHEE BEWA

versus

RAMDHONE PANDAY.

TRIAL No. 2.

RADAMONEE BEWA

versus

RAMDHONE PANDAY.

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Case of RAMDHONE PANDAY.

Appeal rejected.

CRIME CHARGED.—*Trial No.* 1. Burglary in the house of the prosecutrix and theft of the property to the value of Rs. 155-14; 2nd count, receiving property obtained by burglary knowing that it had been so obtained.

Trial No. 2.—Theft of property belonging to the prosecutrix to the value of Rs. 31.

CRIME ESTABLISHED.—*Trial No.* 1. Burglary and theft and receiving property obtained by burglary knowing that it had been so obtained.

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Case of RAMDHONE PANDAY.

Trial No. 2. Theft.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 1st May, 1856.

Remarks by the additional sessions judge.—In trial No. 1. Prosecutrix is a woman of the town, and lives in Mohullah Churruckdangah, Bhowanipore. On the evening of the 21st April, 1856, she left home with a female servant to go to Kalighat, locking the door of the house and fastening the mat door of the outer enclosure with a piece of string. On returning about 8 P. M., she found a crowd collected about her house who told her she had been robbed of every thing. She then saw a police jemadar, ten or twelve feet outside her enclosure, with the prisoner in charge and a bundle of gold and silver things, he shewed her as found on him and which she recognised as her own. The outer door fastening had been cut, the lock to the door of the house forced open, and a *petarah* which she had left inside the house containing all her valuables rifled of its contents. She had only seen the prisoner once before when he came to her house a month before in company with a friend. A knife and two keys were found on the prisoner's person, and a hammer, a large nail, and an iron pick had been left by him in the house or near the inner door outside.

Witnesses Nos. 1 and 2, were on their rounds on the night in question, when they came across the prisoner just as he emerged from the prosecutrix's enclosure on to the high road. Seeing a silver mounted *hookah* in his hand, and a bundle under his arm, they suspected all was not right, stopped and searched him. Every thing prosecutrix had lost was found somewhere about his person. Just as he had been searched, the prosecutrix, they add, came up and joined them, and all (the prosecutrix having just for a moment gone in alone,) entered the house and examined the broken locks, *petarah* and floor.

Witnesses Nos. 3, 4, 5 and 6, live close to the prosecutrix and can be fairly believed when they say they recognise the property found on the prisoner as prosecutrix's. I have no doubt they did *not* see the prisoner captured with the property, and that on this point they have been made witnesses to render the case complete, but this is under the prisoner's previous admission, to that extent, immaterial. Witness No. 8, says he, saw prisoner seized outside prosecutrix's enclosure on the road, and then searched; while witness No. 9, proves he is a disreputable character, and was at the time of his present seizure evading arrest on another criminal charge.

The prisoner says (and he has said so from the first) the property is his; that he got it from a mistress of his of the name of Golabi, just before her death, and that he deposited it

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for safety with the prosecutrix. All this, he says, his witnesses will establish. He adds that the jemadar, in hopes of getting a darogahship by doing so, arrested him at prosecutrix's door where he was awaiting her return to get his property, (he had been at her house he says before she left for this purpose,) and forced the property upon his person, and he says he cannot say whether the jemadar broke open prosecutrix's box to take the things out, or who did so.

Witnes es Nos. 11 and 12, women of the town, and Nos. 15 and 16, never saw prisoner before, and know nothing of him. Witnesses Nos. 13 and 17, knew the woman Golabi, but says she died six weeks back, a pauper, and that prisoner is unknown to them.

The law officer convicts and I agree in the conviction. Sentence is postponed* for the issue to another trial pending in this court against him where the charge is, theft.

* Regulation XV. of 1814.

In trial No. 2.—The prisoner was found guilty yesterday in this court of an aggravated burglary.

On the 13th April, 1856, (eight days before the commission of the other offence,) prisoner accompanied witness No. 8, into prosecutrix's house. Prosecutrix went out to bathe and left him there; on her return she found both prisoner and witness No. 8, (her lodger) absent, and l er silver ornaments gone from under her pillow. She at once sent the witness (on the latter's return home shortly afterwards) to the thannah and made her complaint. The witness made a verbal statement and was allowed, after being kept at the thannah all night, to go home again without having her reply taken down. Three days afterwards (16th April,) the police took the case up, again apprehended the woman Khettroo, and this time wrotedown the defence formally. She could give no information of the robbery, but she gave the prisoner's name, which the prosecutrix was then ignorant of. Prisoner could not be found. On being arrested in the other case, prosecutrix was called to recognise him which she did as the man she had left with Khettroo Raur. The prisoner confessed (witness No. 5,) to the theft and explained where he had deposited the property, but his confession was not formally taken down. The property was found, as the prisoner said it would be, in the house of Poran Potdar, witness No. 6, with whom he had left it in deposit, saying it was his sister's. Prisoner declares himself before me quite unable to make any defence to the charge, and has cited no witnesses. The women in this case, as in the other, are all women of the town; but the law will protect their property as well as that of others. Every one of them, except the woman Khettroo, who has repented evidently having before admitted acquaintanceship with the prisoner, has given her evidence unhesitatingly and con-

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sistently. Prisoner is a most clever and dangerous thief and burglar, and the law officer agreeing in both cases in his conviction (*futwa* "*tazeer*") I pass on him a consolidated sentence under Regulations XV. of 1814, XII. of 1818, Section 2, and XVII. of 1817, Section 8, of ten years' imprisonment with labor and irons in banishment, being seven years in the burglary case and three in this. The prosecutrix to receive back her property. It is highly creditable to the police that every portion of the stolen property in both cases has been recovered.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner has, in appeal, repeated the defence he pleaded at the sessions, namely that Golabi Raur had left him the property and he was on his way to dispose of it, when arrested by the police and accused by Luckeemonee of stealing it. As his defence was not supported at the trial, it can avail him nothing. The sentence passed is confirmed.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.
Officiating Judges.

GOVERNMENT

versus

ROTEE KAPALLEE (No. 20,) FEDOO KAPALLEE (No. 21,) GOKOOL KAPALLEE (No. 22,) AND SHOROOP KAPALLEE (No. 23.)

Mymensingh.

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Case of ROTEE KAPALLEE and others.

In a case of perjury, it was found that the indictment was not according to the facts, and the conviction thereupon by the judge wholly untenable.

CRIME CHARGED.—Perjury in having on the 13th November, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating deputy magistrate at Jamalpore, that they on the night of the 7th November, saw Sheetul Kapallee Radhamohun Kapallee, Rampershad Kapallee, and Lochun Kapallee, at a distance of ten or twelve *hâts* beat Sonaullah Sheikh, with sticks which are generally used by cowherds, and in having on the 15th January, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of zillah Mymensingh, that they did not see Sheetul Kapallee, Ramjoy Kapallee and Lochun Kapallee, beat Sonaullah Sheikh, such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Committing a wilful and deliberate perjury.

Committing Officer.—Mr. W. Cockburn, deputy magistrate of Jamalpore.

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Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 2nd July, 1856.

Remarks by the sessions judge.—The circumstances of this case, as elicited from the records, are these. In a case of murder in which one Sheetul Kapallee and three others were charged, the prisoners deposed before the deputy magistrate of Jamalpore, that they saw those persons, on the night of the 7th November last, beating one Sonaullah with a *pachun* (a stick used for driving cattle with), but when the case came before me for trial on the 15th of January last, they denied having seen any one beating Sonaullah, such contradictory statements having been made on solemn declarations taken instead of an oath. I forwarded them to the deputy magistrate for commitment on a charge of perjury.

The prisoners denied the charge; Nos. 21, 22 and 23 stated that what they said was not recorded in the lower court. I am of opinion that the charge has been fully brought home to the prisoners, it having been proved from the amlah of this and the deputy magistrate's court, who recorded their depositions, that the prisoners made these contradictory statements on oath on a point material to the issue of the case, and that when their depositions were recorded, they were in a perfectly sound state of mind and I therefore convict them, in concurrence with the *futwa* of the law officer, of having committed a wilful and deliberate perjury and sentence them each to 3 (three) years' imprisonment with labor and irons. The prisoners named no witnesses for their defence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoners have been convicted in this case on utterly insufficient grounds. The depositions made by them do not support the charge. The terms of the indictment are such, that it is impossible to convict the prisoners of perjury.

The depositions given by the prisoners before the deputy magistrate differ from each other.

They, none of them, declare, as the indictment alleges, that they saw Sheetul Kapallee, Radhamohun Kapallee, Rampershad Kapallee and Lochun Kapallee, "beat Sonaullah."

They state that they saw different persons beat a certain *individual and heard* afterwards that the man beaten was Sonaullah.

There is a wide and a serious difference between what they really state and what they are alleged in the indictment to state.

Rotee Kapallee states, that he saw *Radhamohun Kapallee* and *Rampershad Kapallee*, beat a certain individual.

Fedoo Kapallee states, that he saw *Rampershad Kapallee, Sheetul Kapallee and Radhamohun Kapallee*, beat a certain individual.

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Gokool Kapallee states, that he saw *Sheetul Kapallee, Rampershad Kapallee, Lochun Kapallee and Radhamohun Kapallee,* beat a certain individual.

Shoroop Kapallee states, that he saw *Rampershad Kapallee* and *Sheetul Kapallee* beat a certain individual.

All these separate statements, though differing from each other, are *condensed* into one statement, which does not agree with the statement of any one of the prisoners, and this statement, assumed to be their's, is found by the sessions judge to be contradictory to another statement made up of replies to questions put to them by the sessions judge on a previous trial ; and they are convicted of perjury.

The indictment was most irregular, and the conviction illegal.

We quash the sentence passed against the prisoners and direct their immediate release.

PRESENT :

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

TRIAL No. 5.

GOVERNMENT AND WOMACHURN SIRCAR AND ANOTHER

versus

KHIDIR GAZEE (No. 13, APPELLANT,) RADHAMOHUN PAUL (No. 14,) SUMIROODHI ALIAS SULEEMOODHI (No. 15,) SOOKCHAND LUMBURI (No. 16,) PUCHAI BHISTI ALIAS PORUSHOOLLAH (No. 17, APPELLANT,) MOHADEB CHUCKERBUTTY (No. 18,) AND AZIMOODHI (No. 19.)

TRIAL No. 6.

GOVERNMENT AND TARACHAND BHUTCHARJEE

versus

SOOKCHAND LUMBURI (No. 16,) AND PUCHAI BHISTI ALIAS PORUSHOOLLAH (No. 17.)

Jessore.

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In appeal, conviction of one prisoner upheld: another found guilty of privity only, not as an accomplice as found by lower court.

CRIME CHARGED.—*Trial No.* 5.—1st count, dacoity in the house of the prosecutor, Womachurn Sircar, attended with wounding of the above named Womachurn and plunder of cash and property belonging to him valued at Rs. 240-1-0 and of property valued at Rs. 73-3-6, belonging to the prosecutor, Roopchand Ghose, on the night of the 9th of May, 1856, corresponding with 28th Bysack, 1263, B. S.; 2nd

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count, prisoners Nos. 14, 15, 17 and 19, are charged with knowingly having had in their possession portions of the property acquired by the above dacoity.

Trial No. 6.—1st count, dacoity in the house of the prosecutor, Tarachand Bhutcharjee and plunder of property valued at Co.'s Rs. 84-4, on the night of the 3rd of May, 1856, corresponding with 22nd of Bysack, 1263, B. S.; 2nd count, knowingly having had in their possession portions of the property acqui ›d by the above dacoity.

CRIME ESTABLISHED.—*Trial No.* 5.—Nos. 13, 16 and 18, are convicted on the 1st count, of the crime charged, and Nos. 14, 15, 17 and 19, on both counts of the crime charged.

Trial No. 6.—Nos. 16 and 17, convicted on both counts of the crime charged.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore; *trial No.* 5, on the 24th July, 1856, and *trial No.* 6, on the 26th July, 1856.

Remarks by the officiating sessions judge.—Trial No. 5.—The complainant, Womachurn, states he was asleep with his family, on the night of the 28th Bysack last, (corresponding to the 9th May,) when he was aroused by receiving a blow on his side. He jumped up and found he was s .rrounded by a number of ruffians who were plundering his house. He tried to make his escape in one direction, but there one of the dacoits struck him, and he made off to try and succeed in another quarter. Here a man struck him with a spear and knocked out one of his teeth. From fear more than real injury he fell down and there laid stupified till the dacoits had gone, when his neighbours came to see and learn what had happened, accompanied by the village chowkeedar who, as usual, was on his rounds in another direction and arrived too late to be of any service.

The property plundered consisted principally of cash Rs. 201-8, and the remainder, clothes, brass utensils, and some few ornaments, about Rs. 70 worth of the property plundered belonged to Roopchand Ghose, brother-in-law of Womachurn, and had been brought to her brother's house by the wife of Roopchand, since the latter was put into jail in some affray case.

The complainant, Womachurn, did not recognize any of the dacoits. In fact it was a stormy, wet, dark night, rendering it impossible to notice distinctly any features.

In his deposition before the police he stated, it was his belief the dacoity had been committed by some released convicts staying in the neighbourhood, the names of three of whom he mentioned. Kalloo Sirdar, one of these, was immediately called upon by the police; but denied having had any thing to do with the dacoity. He said, however, he had reason to believe,

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Khidir Gazee, prisoner No. 13, was one of the party. The prisoners Nos. 14, 15, 16, 17, 18 and 19, were arrested and likewise confessed. These confessions they again confirmed before the magistrate.

In this court all the prisoners plead *not guilty*, ignoring the recorded confessions taken by the police and the magistrate.

The confessions of prisoners Nos. 13, 14, 15, 16, 17, 18 and 19, are attested by respectable witnesses who assert that the confessions were voluntary, and that no kind of compulsion or persuasion or intimidation was exercised or made use of; they likewise affirm that the prisoners that confessed were at the time in the full possession of their faculties and not in any way under the influence of any drug or intoxicating liquor.

The evidence on the record against prisoner No. 13, is the testimony of witnesses Nos. 5, 6, 25 and 26, who were present at the confessions. The prisoner pleads the confessions must have been the work of his enemy, Kalloo Sirdar, that he was in his own house on the night of dacoity, and that he is a man of good character. He cites three witnesses to substantiate his defence. They are all his own relatives but depose that they know nothing in the prisoner's favor. His witnesses to character, likewise his relatives, state they fear he is a bad character.

Against prisoner No. 14, are the depositions of five witnesses present when he made his confessions, and those of witnesses Nos. 31, 32 and 36, who were present when the police recovered articles of property Nos 1 and 2, a piece of black-cloth and a Dacca *sati* on the prisoner's own pointing out. It appears by the deposition of witness No. 31, that the prisoner, the day after the dacoity, brought to him the articles and asked him to take care of them for him until he called again. The prisoner in his defence pleads that the case has been maliciously got up against him by one Kalloo Sirdar and that the witness No. 31, is a connection of the police darogah. He cites witnesses to prove these points and to certify to his good character. The witnesses, as to the pleas in defence, deny all knowledge of the subjects. Those to character, say the prisoner earns an honest livelihood as a doctor.

Against prisoner No. 15, are the depositions of witnesses Nos. 25 and 26, to his confession before the magistrate and those of witnesses Nos. 37, 38 and 40, who were present when the prisoner pointed out to the police articles of property Nos. 3 and 4, a brass *ghuti* and a *galicha*.

The prisoner pleads that the case is maliciously got up against him by one Baserodeen burkundaz who must have drugged him previously to his going before the magistrate. He cites eight witnesses in his defence, but their evidence is generally not in

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the prisoner's favor, as for many months in the year they never know where he is or what he is doing.

Against prisoner No. 16, are the witnesses to the confessions. He pleads that the police beat him till he was out of his senses, and that on the night of the dacoity he was at his own house. Four witnesses are cited for the defence but three, who were present, cannot state they know any thing in support of the pleas.

Against prisoner No. 17, is the evidence of witnesses to the confessions and that of witnesses Nos. 41, 42, 43 and 44 to recovery of the property pointed out by the prisoner. The articles recovered Nos. 5 and 6, were a *khata* and a printed *dolai*. The latter was given by the prisoner to witness No. 41, who is a tailor, to make up into a *chapkan* for him. The prisoner pleads that he sold the printed *dolai* to witness No. 41, for five annas and that it was his own. Also that on the night of the dacoity he was at his house. Five witnesses were cited and four, who have attended, deny any knowledge of the points of defence.

Against the prisoner No. 18, is the testimony of the witnesses present at his confessions. He pleads an *alibi* and cites three witnesses, but they are ignorant of the points in defence and speak unfavorably of the prisoner's character.

Against prisoner No. 19, are the witnesses to his confessions and witnesses Nos. 51, 52 and 53, who were present when he gave up to the police articles of property Nos. 7, 8 and 9, all pieces of wearing apparel. The prisoner pleads that two of the articles belonged to one Gobind Buxee, and the other was his own. Five witnesses are cited for the defence, but they are ignorant on the points pleaded and five witnesses to character. The latter speak unfavorably of the prisoner's character.

The trial was conducted under the provisions of Act XXIV. 1843, Section 3.

I convict the prisoners Khidir Gazee, No. 13, Sookchand No. 16, and Mohadeb, No. 18, on their own confessions and the evidence on the record, which puts it beyond doubt that the dacoity, which they confessed participation in, occurred, on the 1st count; and sentence the prisoner Khidir Gazee, No. 13, to imprisonment with hard labor in irons, for (7) seven years in banishment and to a fine of Rupees 313, under Act XVI. 1850, which when realized, to be paid to the complainants.

I defer passing sentence on the prisoners Nos. 16 and 18, until the result of trial of calendar No. 6, of June, which will be heard to-morrow and in which these prisoners stand committed.

I convict the prisoners Nos. 14, 15, 17 and 19, on their own confessions and the evidence on the record on both counts of the calendar, and sentence them (with the exception of prisoner No. 17, against whom sentence is deferred until the conclusion

of the trial of calendar No. 6, of June, in which he is again committed) to imprisonment with hard labor in irons for (7) seven years in banishment, and to pay a fine of Rupees 313, under Act XVI. 1850, which, when realized, to be paid to complainants.

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Through inadvertence, I find it is mentioned in the magistrate's abstract of examination grounds that the prisoner No. 19, did not confess in the foujdary. His confession is, however, on the record and bears date the 17th May last, having been taken in the presence of the law officer.

A consolidated sentence of imprisonment with hard labor in irons for fourteen years in banishment has been passed this day on the prisoners No. 16, *and* 17, and entered in the trial of calendar No. 6 of June. The prisoner No. 18, Mohadeb Chuckerbutty, has, this day, been acquitted in the trial of calendar No. 6, of June. I sentence him therefore on this conviction to imprisonment with hard labor in irons for seven years in banishment and to a fine under Act XVI. 1850, of Rupees 313. The sum, when realized, from among all the prisoners or any one of them is to be paid to the aggrieved parties in this case.

Trial No. 6.—The aggrieved party in this case is one Tarachand Bhutacharjee. He was not in his house at the time of the dacoity but had gone to Calcutta, and left his family and house under the protection of witnesses Nos. 1 and 5, who were temporarily hired as chowkeedars.

These witnesses mention that on the night of the 22nd Bysack last, they were sleeping at the house of Tarachand, when a gang of ruffians came and bound their eyes with cloth and then broke open the boxes.

The women in the house from fear, it is surmised, of being obliged to appear in court to give their evidence, at first told witnesses Nos. 1 and 5 nothing had been plundered.

The police, however, sent notice to Tarachand in Calcutta, of the occurrence and on his return he gave his deposition, stating he found he had been plundered of rupees 32, in cash and a quantity of wearing apparel and some ornaments.

The discovery of the perpetrators of this dacoity first came to light, in the confession of prisoner No. 16, who had been arrested in a dacoity that occurred in the village of Megla, (see calendar No. 5, of June, or trial No. 5, of July,) and who, in his confession both before the police and magistrate, admitted he had been concerned in both that dacoity and this one.

Through information acquired in this confession, the remaining prisoners in this calendar were arrested.

Against the prisoner No. 16, is the evidence of witnesses Nos. 6, 7 and 8, who were present at the confessions he made before the police, and Nos. 13 and 14 who attested the confessions before the magistrate. These witnesses affirm the con-

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fessions were free and voluntary, and that the prisoner on each occasion was in the full possession of his senses and not under the influence of any drug or deleterious liquor. The witnesses Nos. 3, 7 and 8, were present also at the thannah when witness No. 19, who does duty occasionally as the prisoner's mistress, gave up at the prisoner's desire an article of property markéd No. 1, a new black-bordered *sati*, which the prisoner said he had obtained in the dacoity. The prisoner in this court pleads *not guilty*, and t' at if he ever made any confession he must have been out of his senses. The black-bordered *sati*, he says he bought at the Aleenuggur *hât*, and has witnesses to prove it, four of whom are cited and two appeared. Witness No. 37, remembers that in Bysack, date he could not say, the prisoner gave to his mistress, witness No. 19, a *sati*, but he could not recognize it. Witness No. 40, a relative of the prisoner's, remembers the purchase taking place at Aleenuggur, the price given was twelve annas.

Against prisoner No. 17, is the evidence of witnesses Nos. 9, 10 and 11, who were present at the confession, made before the police. These witnesses all assert, however, that the darogah, did strike the prisoner a blow or two with his hand and a small stick though not with much force. This subject will be brought to the notice of the magistrate. Witnesses Nos. 16 and 17, were present at the confessi n made before the magistrate which they assert was free and voluntary. The witnesses Nos. 10, 11 and 20, were present when this prisoner's house was searched and articles of property Nos. 2 to 6, inclusive, were recovered, the prisoner was not present, but his wife was, and claimed articles Nos. 5 and 6 as her own.

The prisoner pleads *not guilty* and that from fear of ill treatment by the police he made the confession to the magistrate.

In defence he adds that on the night of the dacoity he was lying ill at his own house. He cites one witness to prove this, but the witness does not remember any thing about it.

Three witnesses to character give their evidence that the prisoner was in service earning an honest livelihood, but that for the last year he has taken *ticca* work.

I convict the prisoners Nos. 16 and 17, on both counts in the calendar on their confessions made before the magistrate, which were unquestionably free and voluntary and which are supported by evidence, both as to the actual commission of the crime with which they are charged and to the discovery of certain articles of the property plundered.

These prisoners were convicted of a similar offence in the trial of calendar No. 5, of June, or trial No. 5, of July, and sentence deferred pending the result of this trial.

It is beyond doubt that these prisoners have taken to the profession of dacoity. They are proved guilty of committing two da-

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coities within eight days, and unless arrested would have pursued this infamous course of livelihood. I accordingly sentence them, for these offences, to the consolidated punishment of imprisonment with hard labor in irons for fourteen years in banishment and to a fine of rupees 84-4 annas under Act XVI. 1850. The sum when realized is to be paid to Tarachand Bhutacharjee.

An authenticated copy of the evidence taken in this court of witnesses Nos. 9, 10 and 11, will be forwarded to the magistrate that he may call upon the police darogah for his explanation as to ill-treating the prisoner Puchai Bhisti. The magistrate's attention will likewise be called to the instructions on the subject in Circular Order No. 52, of the 28th December, 1850. It is necessary also to draw the attention of the magistrate to the repeated appearance of witnesses Nos. 13, 14 and 17, in attesting the confessions of parties before him. The practice is strictly interdicted and a copy of the orders of the Court of Nizamut Adawlut on the subject, in reply to a reference, was supplied from this court in its letter to the magistrate dated 18th May, 1852.

In future commitments the attention of the magistrate is also requested to Circular Order No. 88, of the 29th July, 1852, as to the preparation of the calendar and citing the aggrieved parties among the witnesses for the prosecution.

Remarks by the Nizamut Adawlut.—Present: (Messrs. E. A. Samuells and D. J. Money.) Two of the prisoners Nos. 13 and 17 have appealed. Against No. 17, the evidence appears to be clear, and we see no reason to interfere with the sentence. The only evidence against No. 13 is his own confession and this, we observe, is not a confession of participation in the dacoity, but simply of privity. We convict him of this offence and sentence him to two years' imprisonment with labor commutable to a fine of 50 Rs. but without irons.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MOONSHEE SHEIKH.

Rajshahye.

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Case of MOONSHEE SHEIKH.

The Court did not consider that there were mitigating circumstances in the case calling for a reduction of punishment.

CRIME CHARGED.—Perjury, in having on the 30th January, 1856, corresponding with the 18th Magh, 1262, B. S., intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Rajshahye, that Sifatoollah was not his brother. Such deposition being false and having been intentionally and deliberately made on a point materi·l to the issue of the case.

Committing Officer.—Mr. R. Alexander, joint-magistrate of Pubna.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 10th July, 1856.

Remarks by the officiating sessions judge.—The prisoner, Moonshee, appeared at the criminal sessions for the last quarter of 1855, held at Pubna, in January last, as a witness to the defence of one Shufta or Sifatoollah Sheikh. On cross-examination, he denied that the said Shufta was any relation of his beyond the "*Gram Sumpurkya,*" and affirmed that his father and Shufta's father were distinct persons, though having the same name.

As it was well ascertained that he, Moonshee, and Sifatoollah were actually brothers, and the object of Moonshee appeared to be fraudulent, viz. by passing as a person unconnected with Sifatoollah, to obtain a degree of credence to his statement in that person's defence, which he supposed would not attach thereto, if he appeared as his brother. Moonshee was made over by order of this court to the joint-magistrate with instructions to commit him for trial if it should seem desirable. The joint-magistrate has committed him accordingly. It seems that a delay in the arrival of a witness considered to be material, prevented the case from being brought on at the last sessions.

The prisoner pleads *guilty* and throws himself on the mercy of the court.

The original deposition having been by mistake left with the record at Rajshahye, the attested copy has been put in and proved, which, as the prisoner pleads guilty, is sufficient in this instance and the witnesses Nos. 7 and 8, Rojub and Molam Bhooya, depose to the fact of prisoner being own brother of the convict, Sifatoollah, and living together with him.

In conformity therefore with the verdict of the jury (Moon-

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shee Mohotaboodin and Ramdhun Chakee, vakeels of the Sudder Ameen's Court here), I convict the prisoner of wilful perjury. Considering, however, his motive for committing the offence, and considering also that he has been in confinement already for six months, I am of opinion that a further imprisonment of three months with labor will meet the requirements of the case, and I therefore submit the case to the Nizamut Adawlut with a view to mitigation of the minimum legal sentence accordingly.

On perusal of the above remarks, the following resolution No. 702, dated the 15th August, 1856. was recorded by the Court (Present: Messrs. J. H. Patton and J. S. Torrens.)

The Court observe that the officiating sessions judge has not followed the course directed in Clause 3, Section 9, Regulation XVII. 1817, which prescribes that he should pass the minimum sentence of three years according to Clause 2, of the same Section; and then, if he considered that there were any mitigating circumstances attending the case, refer it with his sentiments for the final orders of the Court. The Court observe also that as laid down in the decision of the Nizamut Adawlut of date 31st January, 1855, in the case of Government *versus* Shibchurn Dhobee, there should have been a brief summary of the case in which the perjury was committed filed with the record, so as to enable the Court to judge of the effect of the perjury. The case is returned to the officiating sessions judge in order that he may observe the course above indicated.

In reply to the above resolution, the following letter No. 53, dated the 3rd September, 1856, was submitted by the officiating sessions judge.

With advertence to your resolution No. 702, dated the 15th ultimo, I have the honor to state that, as directed by the Court of Nizamut Adawlut, I have recorded the prescribed minimum sentence upon the prisoner, Moonshee, convicted of wilful perjury, but have suspended the issue of any warrant until the Court's further instructions are received. I had previously explained to the prisoner that his conviction had rendered him liable to such sentence, but that a reference would be made to the superior Court in the hope of a further mitigation.

With regard to the second omission noticed by the Court, I have to observe that the case cited by them had not come under my observation. But I beg permission to state that my letter of reference in its 2nd and 3rd paragraphs contained the essence of the case in which the prisoner had given the false evidence imputed to him, and the case will be found in full at page 752 of the Nizamut Adawlut Reports for this year. (Present: Messrs. B. J. Colvin and J. H. Patton.)

Beyond this, I am at a loss to understand what kind of summary s required. If the Court will be pleased to communicate

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any form in which they wish it should be made, it shall be immediately submitted.

The *nuthee* is now returned.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We do not think that this is a case for mitigation of punishment. The perjury was wilful and deliberate on the part of the prisoner, and with the view to conceal the relationship between himself and the party on whose behalf he appeared to give evidence. We therefore do not interfere with the minimum sentence of three years passed by the sessions judge upon the prisoner.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges

GOVERNMENT, OODOYCHAND AND RAMHURRY
versus
KHEOWRY (No. 4,) AND DHOONGEO (No. 5.)

Chittagong.

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Case of KHEOWRY and another.

Prisoners released; mainly as the evidence in the case was most contradictory, and altogether inconsistent with the statement first given at the thannah on the day after the occurrence of the dacoity. The first statement at the thannah was to the effect that dacoits *unknown* had attacked the

CRIME CHARGED.—1st count, wilful murder of Shurrun Mahajun, son of Oodoychand, prosecutor, and Sham Majee, brother of Ramhurry, prosecutor, for the purpose of possessing themselves of their money and with severely wounding witnesses Nos. 1 and 2; 2nd count, keeping in possession a portion of the property well knowing it to have been obtained by robbery.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 11th of July, 1856.

Remarks by the additional sessions judge.—The prosecutor, Oodoychand stated that he was absent from his home on a visit in the village of Amlish; that one Friday night, or rather before dawn, on Saturday morning, a servant came from his house and told him that his son's wife was ill; that he immediately got into a boat and at 3 P. M. on Saturday arrived at home; that he saw his son named Ramshurrun Mahajun dead on the bank of the river; that he asked the neighbours "How is my son thus?" that they answered that two (hill) "Joomeah" Mughs had taken him away under pretext of selling him boats, and had killed him and Sham Majee in Ramgunnea above the Hulungea Marra stream and below Manickdhanparra. The prosecutor concluded, after considerable hesitation, by charging the prisoners with murdering his son.

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house and murdered the deceased persons, the second that the prisoners who were proceeding in the company of the witnesses on board the boat attacked the deceased and murdered them.

The prosecutor, Ramhurry stated that, the prisoners called his brother Sham Majee from his house and killed him; that he did not see the killing, but charged them with the murder of his brother. This prosecutor was so ill at the trial that it was impossible to insist upon his going into detail in his information, the principal point of which was, that the prisoners had gone away from this prosecutor's house in company with his brother, whose dead body was brought back a few days after.

Of the evidence adduced in support of the charge the most material portion consisted of the depositions of three* persons, who stated that they had accompanied Ramshurrun Mahajun and Sham Majee in the expedition, in the course of which, the persons last named met their death. These three witnesses declared that, after midnight of the day following their departure from the landing-place near the house of Ramshurrun Mahajun in a boat, in company with the said Ramshurrun and Sham Majee and the prisoners under trial, they were awoke by a shower of blows inflicted upon themselves, Ramshurrun and Sham Majee, by the two prisoners, who had slept ashore while the remaining five individuals of the party had lain down to sleep in the boat; that they jumped or fell overboard and swam or floated down stream and hid themselves in the thickets adjoining the banks of the river till day-light; that while it was still early in the morning the boat being descried floating down with the tide, one or more of their number swam off to it and bringing it to shore discovered lying therein the dead bodies of their companions, Ramshurrun Mahajun and Sham Majee. These three witnesses all swore positively to the prisoners having struck the two deceased men as well as the witnesses themselves.

* Witness No. 1, Ramlochun.
" " 2, Hyder Ali.
" " 3, Anwar Ali.

If the evidence of these three men could be relied upon, it would furnish in itself sufficient proof of the deaths of their companions having been occasioned by the murderous assault of the prisoners. Their statements, however, were so full of improbabilities, inconsistencies and positive contradictions that had they not been corroborated by the admissions of the prisoners, no credit could safely have been accorded to them. One of the three, unquestionably perjured himself repeatedly both before the magistrate and in this court; but, considering the degree of intelligence possessed by him, the motives of his prevarication and the chances of acquittal, it did not seem expedient to put him on trial for perjury.

Besides, the direct evidence of the assault presumed to have caused the death of the deceased, Ramshurrun and Sham Majee,

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there is the testimony of the witnesses* to the inquest by the darogah and much more important† the deposition of the medical officer; who stated that he found the bones of the nose of Sham comminated and the skull extensively fractured, and that there could be no doubt that he had been violently beaten about the head, and that death had resulted from the beating; and with regard to Shurrun said that, there were two or three contused wounds on the lower part of his face, and much blood extravasated below the integuments thereof and the scalp, that from the great bleeding which had taken place from the ears, he thought it probable that the base of the skull had been fractured, and that it was evident that death had resulted from severe beating about the head.

The medical officer spoke also to the wounds received by two of the companions of the deceased in their river-voyage namely, the witnesses Ramlochun and Hyder Ally. The witnesses‡ sent in by the police to speak to the wounds of these two persons did not identify them, but had seen, the first, two wounded men, and the second, one.

Next were examined the witnesses to the confessions of the prisoners to the police§ and before the magistrate.|| Afterwards witnesses to the arrest of the prisoners and their delivering up money and cloth which they acknowledged to have taken from the boat of Ramshurrun Manjee; to two meetings with the prisoners on the day after the death of Ramshurrun and Sham Majee; and to several encounters with the same prisoners on different days before the death of those men: such statements being generally and particularly confirmatory of the narrative detailed in the prisoners' confessions to the police and before the magistrate, of their proceedings for some days before and after they beat their companions in the boat.

The defence of the prisoner No. 4, Kheowry amounts to an admission of having struck the deceased persons, qualified by an attempt to extenuate the act by showing that it followed a

* No. 4, Juggodish.
,, 5, Ramjoy.

† No. 7, Dr. W. B. Beatson.

‡ No. 8, Magundoss Beshash.
,, 9, Shoroop.

§ No. 10, Kalichurn.
,, 11, Nilmun Singh.
,, 12, Sadang Rooja.

|| No. 13, Adulchand.
,, 14, Mararee Shaha.
,, 15, Syud Abdoolla.
,, 16, Mahomed Kamil.
,, 17, Ahmed Ali.
,, 18, Aftabudden.

¶ No. 19, Matha Mug.
,, 21, Ramsoonder Singh, burkundaz.

* No. 22, Oomer Singh burkundaz.

† No. 23, Anantram Singh, burkundaz.
,, 19, Matha Mug.
,, 26, Roocpho.
,, 20, Krangh Pooree.
,, 27, Nabingyeo Mug.
,, 24, Tomasddeen.
,, 25, Satooreah.

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combined assault by the five Bengalees in the boat on the two Mughs. This excuse is as devoid of probability as it is inconsistent with the defence of prisoner No. 5. The witness No. 1, Ramlochun would, on a fair trial of strength, have been alone almost a match for both prisoners. It is impossible to read this prisoner's defence, at least it was impossible to hear it, and to observe his and his companion's looks and gestures through a trial continuing during three days and part of a fourth, without being convinced that the two had indeed committed a murderous assault on the deceased, and that the long descriptions of their journeyings, before and after the assault, given to the police and before the magistrate contained in essentials a veritable account of the conception and execution of a deliberate scheme of robbery.

The defence of the prisoners No. 5, Dhoongeo, without directly or by implication admitting that he struck either of the deceased, admits his presence while a conflict was going on between the prisoner No. 4, Kheowry and the Bengalees in the boat, and that he himself took from the boat a piece of cloth, mistaking it for his companion's *puggree* (head dress) in which he found 26 Rupees, and that he divided that sum with his companion Kheowry.

These two defences left little doubt of the truth of the two prisoners' previously recorded pleas, which if not amounting in the latter to admissions of the murder charged, yet distinctly confessed the robbery and allowed that they had beaten the persons who were killed on the occasion.

Futwa.—The Kazee convicted both the prisoners of robbing twenty-six rupees from a boat and declared them liable to *tazeer*, and subsequently stated that the prisoner No. 4, was guilty of culpable homicide, and liable to *kuffara.*

Upon consideration of the pleas and defences of the prisoners and their repeated confessions, together with the evidence confirmatory of the truth of those confessions, I found the prisoners guilty of murder and knowingly retaining possession of property acquired by robbery. With robbery they were not charged.

In the absence of positive certainty as to which of the prisoners inflicted the blows which caused the death of Ramshurrun Mahajun, and Sham Majee, and not being convinced that there was in either of the two prisoners who assaulted the deceased with *lattees*, an intent to take away life, I do not feel justified in recommending a capital sentence. Seeing no distinction of guilt between the shares taken by the two prisoners in the conduct of their felonious expedition, I would recommend for each, the same sentence of imprisonment for life in transportation. The magistrate has been directed to keep the prisoners in close

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custody till the orders of the Court on this reference may be communicated to him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) It does not appear that the evidence adduced for the prosecution in this case is of a sufficiently satisfactory nature for the conviction of the prisoners; indeed, had the grounds of conviction been complete, or were it that any reliance could be placed on the mode in which the confessions of the prisoners had been procured, they would appear liable not merely to the sentence recommended by the sessions judge but to capital punishment. Before the sessions judge they allege very distinctly that they had been induced by the police to make the admissions which they did, by the assurances given them, that they would be exempted from punishment, and even would receive a reward, and there is much in all the circumstances and peculiarities of the case to warrant the supposition that means, something such as they describe, were resorted to, to induce them to confess. The sessions judge remarks on the wholly inconsistent and contradictory nature of the evidence of the witnesses, who deposed that they were in the boat when the murder is stated to have been perpetrated by the prisoners. We find that not only is this evidence most inconsistent in itself, but that it is quite at variance with the account, which was given at the thannah on the 22nd of May, or the day following that of the murder. According to this account given by Sheikh Anwar, one of the parties on the boat, it was stated that they were all sleeping including the two prisoners, either in the boat or on the bank, when it had been attacked by ten or twelve dacoits, the deceased murdered; and the property, they had with them, plundered. The names of the parties attacking, or any recognition of them, this account does not pretend to disclose; and it was only on the 30th of May, that the parties who were on the boat made any mention of the two prisoners having been those by whom the deceased were murdered, or gave any other account of the mode in which the murder had occurred, than that given by Sheikh Anwar on the 22nd, viz. by the open attack on the boat, by dacoits unknown. This same Sheikh Anwar notwithstanding this, in his deposition before the magistrate on the 11th of June, deposes that the two prisoners were the parties, who had killed the deceased, omitting all mention of the dacoity, and clearly endeavouring to support the very confused and ill-contrived story of the sudden attack on the sleeping crew of the boat by the prisoners. Taking this view of the case and of the confessions having been so evidently given on the promptings of the police, to correspond with the account substituted for that of the dacoity, we acquit the prisoners and order their immediate release.

PRESENT:
E. A. SAMUELLS AND D. J. MONEY, ESQS,
Officiating Judges.

GOVERNMENT
versus
SHEIKH GOBRAH.

Mymensingh.
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Case of SHEIKH GOBRAH.

Conviction of perjury by the lower court reversed on appeal, no perjury being manifest in the words made use of by prisoner.

CRIME CHARGED.—Perjury in having on the 19th December, 1851, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before Mr. R. C. Raikes, the magistrate of this district, that he saw Ram Topdar and others present in an affray between Ashkur vakeel, &c., on one side and Nobokishore, &c., on the other and in having on the 3rd June, 1856, again intentionally and deliberately deposed, under solemn declaration taken instead of an oath before Mr. C. E. Lance, magistrate of this district, that he cannot say whether Ram Topdar was present in the above affray or not; such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 14th July, 1856.

Remarks by the sessions judge.—The circumstances attending this perjury are fully detailed in the charge and therefore it is unnecessary to recapitulate them here. Suffice it to say that the prisoner having made contradictory statements in an affray case, he was committed by the magistrate for trial to this court, when he denied having perjured himself and stated that he was not aware what the *serishtadar* of the foujdary court might have recorded as he does not hear properly. The law officer convicts the prisoner of the charge, and I concur in this finding. The mohurrirs of the foujdary court, who took down the depositions of the prisoner on both occasions before the present and late magistrate, Mr. R. C. Raikes, depose that he was of sound mind and that his depositions were recorded on oath. Considering therefore that he is guilty of the perjury with which he stands charged, I convict him of the same, and sentence him to 3 (three) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoner was a witness in an affray case, in the year 1851, and amongst other parties present at the affray he mentions one Ram Topdar. He does not describe him as taking any particularly active part in the affray;

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he does not even distinctly say that he had seen him but simply mentions his name, among a number of others, who, he says, were concerned in the disturbance. In 1856, Ram Topdar, is put upon his trial for this affray, having apparently eluded apprehension in the interim; and the prisoner is cited as a witness against him. He is asked "Do you recognise the person called Ram Topdar whom you formerly mentioned?" His answer is "I only saw him on the day of the affray. I have never seen him either before or since: and owing to the length of time which has elapsed, I cannot recognise him." He then adds in answer to other questions that one Ukoor Valeel, who was looking at the affray along with him had pointed out Ram Topdar, and mentioned his name, and that he had therefore stated it in his first deposition; but that, whether Ram Topdar was really present in the affray or not, he could not say.

These statements are not contradictory of each other, nor is either of them necessarily false. They may both be perfectly true. Indeed nothing can be more probable than that the prisoner should in 1851, have had a person pointed out to him in the affray as Ram Topdar, and should therefore have thought himself justified in introducing his name into his deposition; and that in 1856, having forgotten his appearance, and not feeling sure that he had been rightly informed, as to his identity, he should not be able to recognise him or to feel sufficiently certain of the fact to be able to swear positively that he was present. We acquit the prisoner of the charge of perjury, and direct his immediate release.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND GHOLAMEE SHEIKH

versus

MADAREE SHEIKH (No. 4,) AND MUNGLOO MUNDUL (No. 5.)

Moorsheda-bad.

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Case of MADAREE SHEIKH and another.

Appeal rejected.

CRIME CHARGED.—1st count, Nos. 4 and 5, dacoity in the house of the prosecutor, Gholamee Sheikh, from which property to the value of Rs. 506-4, has been plundered; 2nd count, No. 4, knowingly receiving and possessing some portion of the property acquired by the said dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Baboo Mudunmohun Turkolunkar, deputy magistrate of Moorshedabad.

Tried before Mr. R. P. Harrison, sessions judge of Moorshedabad, on the 17th July, 1856.

Remarks by the sessions judge.—This was a simple dacoity committed in the house of the prosecutor, on the night of the 7th April, by a gang of eight or ten persons. The prosecutor deposes that property to the value of Rs. 506-4, was carried off by the dacoits. He recognized both the prisoners at the time, and having informed the darogah that he had done so, they were apprehended on the 9th idem. On searching the house of the prisoner No. 4, some raw silk, No. 1, was produced by his wife, witness No. 17, who states that her husband was called from his house on the night of the dacoity by the prisoner No. 5, that he was absent all night and on his return on the following morning brought the silk with him, telling her that he had got it from a relative.

The prisoner No. 4, confessed both before the police and the deputy magistrate implicating No. 5 and others. Nothing was found in the house of prisoner No. 5 who denied all knowledge of the dacoity. The confessions of No. 4 are proved to have been voluntarily made by the witnesses noted in the margin.* Witnessses Nos. 5, 7 and 8, identify a knife picked up in the house of the prosecutor, where it had been dropped by the dacoits as belonging to prisoner No. 4; witnesses Nos. 16, 17 and 18, recognise a ruler picked up in the house of the prosecutor after the dacoity as the property of prisoner No. 5.

* Mofussil Nos. 6, 7 and 8.
Foujdary Nos. 9, 10 and 11.

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Thakoordoss chowkeedar* of the Mohulla, in which the prisoners reside, states that they were absent from their houses on the night of the dacoity.

* Witness No. 16.

Jeegree† Auruth states that her husband, Hosseinbux, who died in jail was called away by prisoners, Nos. 4 and 5, on the night of the dacoity and that on his return the following morning he brought with him some raw silk and a *lotah*, which he concealed under the ground. The property found in the house of Hosseinbux as well as that produced by the wife of prisoner, No. 4, has been identified‡ as belonging to the prosecutor.

† Witness No. 18.

‡ Witness Nos. 2, 3, 4 and 5.

Both prisoners plead *not guilty*. In his defence No. 4 admits that he accompanied the dacoits stating that he was forced to do so. He acknowledges having received the silk and admits that the knife found in the prosecutor's house belongs to him.

Prisoner No. 5, in his defence states that the prosecutor and witnesses Nos. 17 and 18 bear him enmity.

The witnesses cited by the prisoners depose to their previous good character.

I consider the guilt of the prisoners fully established by the evidence; I convict them both of dacoity, and sentence them to be imprisoned each for seven years and for two years additional in lieu of stripes with labor in irons. I further sentence the prisoners under, Act XVI. 1850, to pay a fine of Rupees 473-10-9.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The evidence in this case is conclusive against the prisoner Madaree Sheikh. There can be no doubt of his guilt from his own confessions before the police and the deputy magistrate, as well as his recognition by the prosecutor, and the finding in his house of part of the stolen property. The charge we think is in like manner established against the prisoner Mungloo Mundul. His recognition also by the prosecutor, who gives information immediately to the police, his absence that night from his house, the finding of a ruler belonging to him in the prosecutor's house immediately after the dacoity and the statement of the wife of Hosseinbux, who died in jail, that both the prisoners called away her husband on the night of the dacoity, all raise a violent presumption of the prisoner Mungloo Mundul's complicity. We see no reason therefore to interfere with the sentence passed against both the prisoners by the sessions judge.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND ASSANOOLLAH

versus

PATHOO.

Backergunge.

1856.

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Case of PATHOO.

Prisoner convicted of the murder of his wife, sentenced capitally.

CRIME CHARGED.—Wilful murder of Musst. Pashanee.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 6th August, 1856.

Remarks by the sessions judge.—The *futwa* convicts of wilful murder, and the sentence is "*kissas*," in this finding, I entirely concur.

The prisoner is arraigned on a charge of wilful murder of his wife, a girl aged about twelve years; in this court he pleaded *not guilty*. Before the police, as also before the magistrate, he confessed to having killed his wife with a *dao*, which weapon was found, and weighs thirteen *chittacks*. A sketch is submitted with the record.

It appears, that on one day in the month of Assar last, the witnesses Musst. Aleja, No. 9, Musst. Phoolee, No. 10, and the deceased, Musst. Pashanee, were engaged together pounding paddy; at that time the prisoner came home and called his wife and ordered her to give him his food, the deceased went for that purpose. Shortly after, the witness, No. 9, heard the prisoner and his wife quarrelling together in the western house of the same homestead. She heard the prisoner say to the deceased that he would no longer live in that house, and that it was his intention to go and live with Sharaye Akhoond, witness No. 5.

The deceased objected to this arrangement, stating that her uncle and aunt lived in the house they were then living in, and that she would not go, and live with a stranger. Shortly after, the witness, No. 9, heard a sound proceeding from the western house like "Oh *mâ*." She went to the door of the western house and saw the prisoner standing with a *dao* in his hand, the deceased was lying on the ground and blood was flowing from wounds on the left shoulder, on the elbow and on the side. The prisoner threatened to cut down the witness, should she enter the house.

The confessions in the mofussil and before the magistrate

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appear to have been voluntarily made; they are attested by the witnesses named in the margin.*

The medical officer† deposes that though the body was very much decomposed, he was still able to observe a wound, six inches long, in the vicinity of the shoulder-joint, he is of opinion that if this wound was inflicted during life, it was sufficient to cause speedy death. The wound observed, might, in the opinion of the witness, have been inflicted by a sharp cutting instrument, such as a *dao*. The witnesses‡ to the mofussil inquest depose to the number and nature of the wounds.

* Mofussil confession.
No. 2, Alumtaj.
" 3, Dianoollah.
" 5, Sharayo Akhoond.
Confession before magistrate.
No. 8, Wally Khoondkar.
" 7, Meer Ohazooddeen.

† No. 4, Dr. Scanlan.

‡ No. 2, Alumtaj.
" 3, Dianoollah.

The defence of the prisoner in this court is, that he was sick with fever, that the police jemadar oppressed him and that he, the prisoner, is unable to say what confession may have been recorded; that when his confession was recorded in the presence of the magistrate, he was not in his right senses. That the witness, No. 10, Phoolee, being anxious to marry to her son-in-law, Ashkur, the wife of the prisoner, had given to his wife in the month of Jyte last, some poison to administer to him, the prisoner; that his wife being attached to him, did not administer the poison to him; that it was given to some fowls and that three or four died from its effects. That on the day of the murder he, the prisoner, had a quarrel with the aforesaid Phoolee; that she, intending to wound the prisoner with a *dao* rushed at him when the prisoner taking refuge behind his wife, the blow intended for him fell upon her and thus caused her death. The prisoner cited no witnesses.

I need not point out to the court the improbability of this defence; the murdered girl was wounded in three different places and this defence set up in this court, for the first time, is entirely inconsistent with the voluntary confessions of the prisoner before the police and the magistrate, and the testimony of the witness No. 9.

The prisoner married the deceased when she was an infant, aged four years. Her father, Assanoollah, states her age to have been about eleven years when she was cruelly murdered by her husband. The only possible motive that I can assign for the conduct of the prisoner is a jealous suspicion on his part of an intrigue between his deceased child-wife and Ashkur. The testimony of the witnesses goes to prove that the deceased was chaste, she was quite a child, it is doubtful whether she had arrived at puberty, and beyond such innocent liberties as are, even in native society, usual and permitted between relations

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standing in the position that the deceased did to Ashkur,* no proof whatever of misconduct on her part can be found on the record.

It is my duty to recommend a capital sentence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) This is a cruel murder of a young wife from an unfounded suspicion of her having an intrigue with a near relation. It is clearly proved by the circumstantial evidence adduced on the trial, as well as the prisoner's voluntary confessions before the police and the magistrate. We convict the prisoner of wilful muder, and seeing no extenuating circumstances sentence him, as recommended by the sessions judge, to suffer death.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT

versus

SREEMUTTIAH SAROTHEE.

Midnapore.

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Case of SREEMUTTIAH SAROTHEE.

CRIME CHARGED.—Attempt at murder, having with the intent to destroy, exposed her infant daughter in a jungle.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. I. Leycester, officiating sessions judge of Midnapore, on the 12th August, 1856.

Prisoner found guilty of the attempt to destroy her infant by exposing it in the jungle and sentenced to 5 years' imprisonment with labor suitable to her sex.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty.*" It is in evidence that on the 2nd Jyte, 1263, Umlee, corresponding with 2nd June, 1856, as one Haroo Mahto, (witness No. 4,) was grazing cows in the jungle near a road to the south of the village of Dhordhemna, he heard the cries of a child, and going to the spot, found under a tree an infant only one month and a half old without any one near for its protection. Haroo went to the village, distant the call of the voice, and brought assistance. The child was given into the care of the sirdar chowkeedar, Dhunnoo Dulooee, witness No. 2, who, the following morning, brought the infant with him, and gave information at the thannah.

A burkundaz was despatched to find the mother, and on the information of Akloo Mahto, and Goburdhun Mahto, the prisoner, Sarothee *alias* Soonduree, the mother, was arrested at

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* Ashkur, who is a widower, married the elder cousin of the deceased.

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Case of SREEMUTTIAH SAROTHEE.

the village of Bamunmaree, twenty-four miles distant from the spot where the infant was found.

The answer of the prisoner before the magistrate is tantamount to a confession of her guilt, but the magistrate did not seem to view it in that light, for he has neither required witnesses to attest it, nor has he himself certified it in the prescribed manner, which certainly should have been done.

The prisoner sets up no defence.

The *futwa* of the law officer declares the prisoner liable to *tazeer*, acquitting her of the gravamen of the charge, but I can find no reason to take so lenient a view of her conduct, and am of opinion that the charge is fully proved against the prisoner, whom I would recommend to be imprisoned for seven years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The crime appears to have been committed under pressure of want, and under all the circumstances of the case, we think that five years' imprisonment with suitable labor will be adequate.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,

Officiating Judges.

GOVERNMENT AND SRIMOTTY NOWASHA BEBEE

versus

HYDER ALEE (No. 1,) OMER ALEE* (No. 2,) AND MOKUR ALEE* (No. 3.)

Chittagong.

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Case of HYDER ALEE and others.

Prisoner released inasmuch as the ownership of the property alleged by the prosecutrix to have been stolen was not shown to be with her and also inasmuch

CRIME CHARGED.—1st count, No. 1, theft in having stolen property to the amount of Co.'s Rs. 921-12, *belonging to the prosecutrix;* 2nd count, having retained in his possession a portion of the property acquired by theft, well knowing the same to have been so obtained. Nos. 2 and 3, having retained in their possession a portion of the property acquired by theft, well knowing the same to have been so obtained.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 3rd July, 1856.

Remarks by the additional sessions judge.—The prosecutrix stated that on a certain Tuesday, in the month of Jeyt last, the prisoner No. 1, Hyder Alee, who had come from Moulmein,

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* Acquitted by the lower court.

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as independently of that point, the evidence on the record was insufficient to bring the charge of theft home to the prisoner.

with her and her daughter, Choonee Bebee, (witness No. 18,) and who always lived with them, left in their company her brother-in-law's house, at a village in the neighbourhood of the town of Chittagong, and came to the house of prosecutrix's husband, which is situated in the more immediate outskirts of the station. In reply to a question as to the duration of Hyder Alee's residence with her and her daughter, she modified "always" (বরাবর) into eight months.

She declared further that the prisoner, Hyder Alee, finding that prosecutrix's husband was ill, begged her daughter, Choonee Bebee, at 1 P. M. on the same Tuesday, to return to her aunt's (prosecutrix's brother-in-law and sister's) house; that prosecutrix desired him to set about getting a boat, which was afloat up on the bank of the river, and that the prisoner then left them.

She stated moreover that at 8 P. M. of the same Tuesday, three persons came and told her that the prisoner, Hyder Alee, had broken open her chest (which had been left in her brother-in-law's house) and taken all her property; that she went that night (to her brother-in-law's house) and found the lid of her chest divided and the chest itself empty; that 700 in cash were stolen, and 10 (gold) mohurs, and one glass, and a torn umbrella, and two shawls, one yellow and the other white, together with some bonds and other documents, and a quantity of silver ornaments, which she named, and which had been pledged with her by several individuals.

Prosecutrix continued her narration by describing the search in her presence of the house of the prisoner, Mokur Alee, and the discovery there of her glass buried under the "*ooqur*" (platform,) of her torn umbrella on a bamboo shelf or "*machan*," and finally of a wax candle, which she declared to be her property, although she had not mentioned it in her information to the police. She stated that she witnessed the search of another house, which she calls the property of the same prisoner, but of which he denied the ownership and forbad the search; that the back mats of this house were cut through and some one removed property by the opening, and that the Moonshee (police mohurrir) and a burkundaz seized prisoner No. 2, Omer Alee, with two shawls, which she recognized to be those which had been stolen from her.

Prosecutrix charged prisoner No. 1, Hyder Alee, with breaking open her chest, and stealing her property; after consultation with prisoner No. 3, Mokur Alee, but declined to prosecute prisoner No. 2, Omer Alee.

In her information before the magistrate, she did not make any charge against any one of the prisoners. From a note subscribed to her deposition by the magistrate, it appears she was in a very weak condition with cholera, when it was recorded.

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In answer to questions by the counsel for the prisoners, prosecutrix stated that her daughter, Choonee Bebee lived at Moulmein as a prostitute; that she accompanied her daugher to Moulmein, that Magun Khansamah there married prosecutrix by *nikah;* that Choonee Bebee had no husband then; that she could not say where prisoner, Hyder Ali, then lived; that he visited her daughter as any other person might; that he frequented her daughter's house for six months or a year; that after coming with prosecutrix and her daughter to Chittagong, he began with tears to entreat her to permit him to wed Choonee Bebee by *nikah*, and that she answered she would give her to him by *nikah* after effecting her separation from Jan Ali, to whom she had been married long before they had been to Moulmein; that Hyder Ali stole Jan Ali's Kavintao, that she *was informed by Ramanund Burkundaz* that the glass was found under ground in the house of prisoner No. 3, Mokur Ali; that the candle was found in the chest of the same prisoner; that she sent prisoner, Hyder Ali on one occasion to Naraingunge with two hundred rupees, and he brought back seven score; that another time she gave to the prisoner for the trade in fish at Sylhet seven hundred rupees, and Magun Khansamah, (her husband) went in company; that her brother-in-law took a writing from them, and that five hundred and fifty rupees were brought back; that prisoner conducted (her) business and went to market (for the family); that sometimes prisoner and sometimes Choonee Bebee cooked; that prisoner and Choonee Bebee lived together; prisoner, Hyder Ali, was not Choonee Bebee's servant; that prisoner Hyder Ali, at his house, in the village of Hingolee, first denied the theft, but afterwards acknowledged it; that Hyder Ali, prisoner, desiring to marry Choonee lived with her; that *she prosecutrix lived by trading with the money accumulated by her daughter's prostitution;* that Hyder Ali, had no share in that trade.

In answer to a question by the law officer, prosecutrix further said that she had heard the property recovered, with the exception of the glass and umbrella and shawl, had been buried by prisoner, Hyder Ali, in a pine-apple bed, and that the said prisoner pointed out the spot.

The first witness examined for the prosecution deposed

No. 2, Poya Bee.

that on a Tuesday at the end of Kartick, after prisoner, No. 1, Hyder Ali, had gone in company with prosecutrix and her daughter to the house of Magun Khansamah (prosecutrix's husband,) the said prisoner returned alone at noon to the house of Oomed Ali burkundaz; (brother-in-law of prosecutrix,) that witness was drying rice in the yard of the house, when the prisoner came in; that the prisoner went into the west house and put down his upper cloth; that he afterwards went into the east house and knocked at the

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lock of the chest in the *hateena* or front room; that he next went to bathe and witness took up her rice; that at the time of the prayer "*assur*" witness in company with Oomed Ali's wife met the prisoner leaving the house, and he in answer to questions by the latter said he was going to Dumpara;* that he was carrying a musquito curtain and an umbrella and a glass, and said that prosecutrix had desired him to bring the musquito curtain and glass; that witness has seen the prisoner, Hyder Ali, (living) at Oomed Ali burkundaz's house for eight months, and that prosecutrix and her daughter, Choonee, said he was the husband of the last, they also said that he had given her ornaments. Witness deposed that the glass and umbrella produced in court were the property of the prosecutrix, &c.

No. 3, Haree Bee.

The next witness, a girl of ten, and daughter of Oomed Ali burkundaz, deposed on a simple affirmation much to the same effect as Poya Bee. She stated, however, that her aunt, prosecutrix's chest was broken before she saw the prisoner, No. 1, Hyder Ali, raising the hinges with a bill book, and that there were many children in the yard besides herself and Poya looking in at the door of the house, while the prisoner was doing so. She also deposed to the prisoner's having played at cards on the bank of a tank after bathing and taking a sleep, and said that after playing, he returned to the house and began again to beat the broken chest and told witness to go to the road for fish, which she did. Witness declared that the chest of which she had spoken was not the chest produced in court. She answered in the affirmative to a question by the counsel for Government as to whether that evening she had seen the prisoner going with a bundle and a glass, and an umbrella. She also identified certain of the property recovered. She further deposed, in answer to a question by the court that prisoner No. 1, Hyder Ali, was her cousin Choonee's husband, and said, moreover, that he and Choonee lived and took their meals together.

No. 4, Omer Ali.

The evidence of the next witness is that one Tuesday in last Ramzan, at noon, prisoner, No. 1, Hyder Ali asked him to put hinges on his chest, which witness on the plea of illness refused to do; that the same evening at the time of "Assur," prisoner, No. 1, went last and told witness he was going to Magun Khansamah's house, and that prisoner had then a bundle on his shoulder and an umbrella in hand, the one produced in court, and that he had seen the prisoner on other days carrying that umbrella and that he has heard since the time that Hyder Ali came to Oomed Ali burkundaz's house, that he was plaintiff's son-in-law and Choonee's husband.

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* Where lives Magun Khansamah.

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No. 5, Ameer Bee.

The next witness, who is sister of Oomed Ali burkundaz, deposed that early in Aughun last, Choonee Bebee and prosecutrix and prisoner No. 1, Hyder Ali, came from Moulmein, and when witness asked prosecutrix (witness's brother's wife's sister,) "Who is this?" prosecutrix answered, "I have married my daughter, Choonee Beebee." She said further that one Tuesday evening in Jeyt last, her brother's, Oomed Ali burkundaz's, wife was crying and told witness that some one had broken a chest and taken something; the sister-in-law suspected the prisoner No. 1, Hyder Ali. Before the magistrate, this witness deposed that prosecutrix told her when asked about prisoner, No. 1, Hyder Ali, that he had given her daughter one hundred rupees worth of ornaments, and that after Hyder Ali and prosecutrix's return home from Moulmein, which, she said had, taken place eight months before, *Hyder Ali carried on trade and mercantile transactions and the occupation of a husbandman*, and that on the day when prosecutrix and Choonee Bebee and prisoner, No. 1, Hyder Ali, went to visit prosecutrix's husband, she, witness, saw the prisoner No. 1 Hyder Ali, breaking prosecutrix's chest and that he told her in answer to her enquiries that he had been desired to have the hinges altered. She declared moreover that she asked the said prisoner *how his father-in-law was?*

The remainder of the witnesses for the prosecution deposed to the prisoner, No. 1, Hyder Ali's confessions to the police* and before the magistrate,† to the finding of the torn umbrella, the glass and the wax candle in the house of the prisoner No. 3,‡ Makur Ali, the canvas bag, No. 5, in the house and shawls No. 4, in the possession of the prisoner No. 2, Omer Ali,§ and the rupees and silver ornaments, Nos. 7 to 23, in some jungle, near the house of the prisoner, No. 1, Hyder Ali, who pointed out the two places in which they were concealed to the police, and identified all the property as belonging to prosecutrix, or having been pledged to her. None of these witnesses, however, stated that the glass was found under ground, in prisoner No. 3, Mokur Alee's house, nor did any of them relate that any cut was made through the mats behind that prisoner's house.

* No. 6, Mahomed Enus.
" 7, Muddunmohun Ludh.
† No. 11, Tomejuddeen.
" 12, Obhoyachurn Sein.
‡ No. 6, Mahomed Enus.
" 9, Doorgadhun.
" 16, Azmut Ali.
" 17, Chundeechurn.
§ No. 13, Mohirooddeen.
" 14, Mahomed Syud
" 15, Ramlal burkundaz.
No. 6, Mahomed Enus.
" 7, Muddunmohun Ludh.
" 8, Ramgottoo.
" 9, Doorjadhun.
" 10, Ramkanto Baroohee.

Of these witnesses, however, there is one, viz. the daughter of the prosecutrix, to whose evidence it is needful more particularly

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to refer. She has deposed that the prisoner was nothing to her more than a paramour, although it appears from the evidence of the witnesses named in the margin,* that she gave herself out in her uncle's village and to her mother's nearest kin to be his wife, and was so commonly reputed. She has deposed in corroboration of her mother's information that the prisoner, Hyder Alee, on the day on which the theft is alleged, told her at the house of her father-in-law, that he was going home (that is to the house of Omed Alee Burkundaz, where they had been living together as man and wife for months, and from which the property was carried off.) *She deposed further that all the property recovered and produced in court save that which had been taken in pledge by her mother was her (witness's) own property.* She answered to the Moulvee's question, "How long has Hyder Alee been with you?" Something less than two years, and that they had begun to live together four months before they left Moulmein. She deposed, moreover, in answer to a question by the counsel for the prisoner, Hyder Alee, that she had given the prisoner, No. 1, Hyder Alee, first for the Dacca trade two hundred rupees, of which he returned seven score, and again sent him with a boat and six hundred rupees to trade at Sylhet, taking from him a deed called *Shurkhut* and that he brought back five hundred and fifty. He was not paid, she said, for this work, nor had any partnership in the trade, he was her paramour.

* No. 2, Poyee Bee.
" 3, Haree Bee.
" 4, Omer Alee.
" 25, Hasun Alee Sowdagur.
" 28, Aboo.
" 29, Futteh Alee.
" 30, Moteeoollah Burkundaz.
" 5, Ameer Bee.

The prisoner, No. 1, Hyder Alee's defence was, that he served for about ten years in the *dak* boat at Moulmein on a salary of ten rupees per mensem, and afterwards in a steam-boat on a salary of seventeen rupees per mensem; and that having traded with the savings from his salary, he had accumulated nearly nineteen hundred rupees, which, having, according to the Mahomedan law, married Choonee Bebee by *nikah* and lived nearly two years with her as man and wife, he bestowed upon his said wife; that having been long absent from his country and being desirous of returning thereto, he resigned his employment and brought his wife with her mother to the house of Omed Alee Burkundaz, the husband of his wife's aunt, Jan Bebee, intending subsequently to settle in a house of his own, when opportunity offered; that living in the mean time at the Burkundaz's house, he traded to Naraingunge, and other places and so supported his wife and mother-in-law; that considering the property of husband and wife common, he kept all his money and valuables in charge of his wife and her mother, and had his business deeds

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and bonds drawn out in favor of his wife, Choonee Bebee, and that this was the explanation of his describing the money and valuables (in his quasi confessions to the police and the magistrate) as his wife's; and that, in consequence of his wife and mother-in-law having charge of all his property, and the deeds connected with his trade being drawn out in their favor, they were not submissive to his authority, but on the contrary that his mother-in-law was in treaty with an ameen called (like himself) Hyder Alee, to marry Choonee Bebee to him, whereat prisoner being exasperated in order to give them a lesson, broke open his own chest, which was previously somewhat broken, and removed therefrom all the property produced in court, save the umbrella and the drinking vessel, and carried them to his old home at Hingolee, and there carefully concealed them without the privity of any one, intending, after having given his wife and mother-in-law the required lesson, to return the property and resume co-habitation with his wife; that she, prosecutrix, by the evil counsel of the Hyder Alee before mentioned, had fraudulently charged him with theft; that in fact he committed no theft, that the drinking vessel and candle belonged to prisoner, Mokur Alee, and the canvas bag to prisoner, Omer Alee; and that he had given the umbrella to the son of Mokur Alee; and that plaintiff and her daughter had alleged in the presence of many respectable persons assembled at the house of Omed Alee Burkundaz, that all the money brought from Moulmein had been accumulated by the prisoner and was his property, and declared that Choonee had been married to the prisoner.

The prisoner, Omer Alee's defence was, that he did not receive any of the property brought by Hyder Alee, but that, while the prisoner Mokur Alee's house was being searched, having been requested by the prisoner, Hyder Alee, to bring from his (Hyder Alee's) house, to be shewn to the prosecutrix, a pair of shawls which Hyder Alee had brought home, he complied with the said prisoner's desire.

The prisoner, No. 3, Mokur Alee's defence was, that he had not knowingly retained possession of any of the property brought home by the prisoner Hyder Alee, and that the drinking vessel and candle were his own property and that the umbrella had been given to his son by the prisoner, Hyder Alee.

The Kazee found the prisoners, No. 2, Omer Alee, and No. 3, Mokur Alee, *not guilty*, and in that finding, I concurred. In regard, however, to the prisoner, No. 1, Hyder Alee, whom the *futwa* declares guilty of theft and knowingly retaining possession of property acquired by theft, I dissented from the law officer. I would acquit that prisoner with the others.

The prisoner is charged with "theft in having stolen property to the amount of Co.'s Rs. 921-12, belonging to the prosecutrix."

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From the evidence of the witness, No. 18, Choonee Bebee, it appears that all the money recovered from the prisoner, No. 1, Hyder Alee, as well as all the bonds and other property, except that pledged to witness's mother, belonged to that witness. The indictment then for stealing the property of the prosecutrix is wrong on the showing of the most material witness for the prosecution, who spoke to the ownership of the property said to have been stolen.

Leaving, however, this technical objection to the indictment, which nevertheless I apprehend to be fatal to a conviction thereon, I have to state the considerations which have led me to the conviction that the prisoner did not commit theft. The prisoner, whether actually married to Choonee Bebee or not, passed in her family as her husband, and was so regarded by the neighbours. That he was treated by Choonee Bebee and the prosecutrix with more than the confidence reposed on a husband, is evidenced by the several trading expeditions which he conducted when the money was entrusted to his charge, on one occasion to the amount of six hundred rupees, although the husband of the prosecutrix was his companion in the boat, and would surely have had charge of the capital to be expended, if it had really belonged to his wife, and if the prisoner had been, as the prosecutrix and her daughter now represent, a paramour only, and absolutely uninterested in the speculation. Then prisoner on the day, when the theft is charged, told his wife that he was going home. He then went home and in the most open manner began to break open a chest, which unless it had been well known in the house that he was the owner or virtual master thereof, it is obvious he would have been immediately prevented from meddling with. After he had bathed, slept and played cards, he left the house in the afternoon in the most public manner and went off with a bundle over his shoulder to his first wife's house, misrepresenting, it is true, to the spectators the object of his departure. It appears to me that being a sea-faring man, if he had desired to steal the prosecutrix's or his wife's property he would have gone off to Moulmein, Arracan or some other port, instead of taking the money and valuables straight to the house of his first wife, which was well known to the second and to the prosecutrix. When he got home, it is not shewn that he exhibited his spoil to his first wife or to any other person or that he spent any portion of the money. He allows himself that he spent thirteen rupees eight annas, and lost two hundred. If he had stolen the whole of the sum declared by prosecutrix, when he voluntarily gave up two hundred and seventy-nine in cash and a considerable quantity of silver ornaments, why should he have pleaded guilty to the taking two hundred rupees more than was recovered, except that he chose to describe the transaction faithfully. Again, the spontaneous

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discovery of the rupees and silver ornaments, which had not been found by the police when his house was searched, and which if he had then finally left undiscovered, he might fairly have calculated even if convicted of theft, to be able to recover after his discharge from imprisonment and apply to his own use, seems to be absolutely inconsistent with the supposition that he had stolen the property and only to be accounted for by accepting the truth of his three times repeated declaration that he took the property merely to harass his wife and her mother, and with the full intention of restoring it after they had received a sufficiently impressive lesson.

Finding the prisoner, No. 1, Hyder Alee, *not guilty*, while the law officer convicts him, I refer the trial for the orders of the Nizamut Adawlut in regard to him. The other two prisoners have been duly discharged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The facts of the case are detailed by the sessions judge, in his letter of reference, at such length that it is unnecessary for us to recapitulate them.

The prisoner No. 1, regarding whom, in consequence of a difference of opinion between the law officer and the sessions judge, the case has been referred, is charged with theft, in having stolen property to the amount of Company's Rupees 921-12, belonging to the prosecutrix.

As observed by the sessions judge, the evidence as to the ownership of the property is not favorable to the claim of the prosecutrix; her daughter claims the whole of it, with an unimportant exception, as belonging to her; in this conflict of evidence on the part of the prosecution as to the ownership of the property alleged to have been stolen, the indictment, as laid, necessarily fails. But, independently of this point, we are of opinion that the evidence on the record shows no wrongful taking, or carrying away of the property, whether it belongs to the prosecutrix or not, by the prisoner with a fraudulent intent, to convert it to his own use; and consequently does not bring home to the prisoner the offence with which he is charged. This being the case, it is unnecessary to enter upon an examination of the defence set up by the prisoner.

Under the above circumstances, we agree in the opinion which the sessions judge has expressed in his letter of reference, and direct that the prisoner be immediately released.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

ESHURCHUNDER ROY (No. 6,) RUSSOMOY MITTER (No. 7,) AND KHAS MAHOMED (No. 8.)

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In concurrence with the judge, whose opinion differed from the *futwa* of the law officer, prisoner was acquitted of the charge of affray.

CRIME CHARGED.—Affray, attended with the severe wounding of Russomoy Mitter and Khas Mahomed with gun-shots.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 19th July, 1856.

Remarks by the sessions judge.—This reference is necessary in-as-much as I differ from my law officer. He convicts the prisoner No. 7. Russomoy Mitter of "affray attended with severe wounding of Russomoy Mitter and Khas Mahomed," I would acquit the prisoner.

That an affray took place in which the zemindars of Rae Kattee and their servants and hired *lattials* were mutually concerned is undoubted. I have, in concurrence with the law officer, convicted Eshurchunder Roy No. 6, and Khas Mahomed, No. 8.

No one witness, either before the police, the magistrate, or in this court, deposes that the prisoner Russomoy Mitter No. 7, was engaged in the affray The only evidence against him is entirely hearsay or circumstantial. The witnesses noted in the margin* depose that they heard that an affray had taken place between the Rae Kattee zemindars and that the prisoner No. 7 had been wounded with shot in that affray. They also state that they, at different times and in different places, saw Russomoy Mitter, prisoner No. 7, towards the end of Kartick or in the beginning of Agrun in a wounded state. The medical officer† deposes, that the marks observable on the shoulder and abdomen of the prisoner No. 7, are those of shot-wounds; from this evidence the law officer infers that the prisoner was concerned in the affray and would convict him.

* No. 11, Mohimachundur Konjilal.
" 12, Becharam Biswas.
" 13, Sumbhoochunder Konjilal.
" 14, Eshurchunder Ghose.
" 15, Koobeerchunder Gooho.

† No. 10, Dr. Scanlan.

The affray took place on the 31st October, 1855. The prisoner voluntarily surrendered himself on the 16th April, 1856.

The evidence of the witnesses Nos. 11, 12, 13, 14 and 15, in this court is briefly as follows:—

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No. 11, *Mohimachunder Konjelal* deposes thus: I heard that there had been an affray, and that the prisoner No. 7 had been wounded. One day, I met the prisoner on the road, the prisoner told me that three shots had hit him in the abdomen, and that one wound was still painful. I did not see the wounds. I told nobody of this. I am a ryot of the Bongram zemindars. There was a great feud between the Bongram and Rae Kattee zemindars about land. At the thannah this witness deposed that he saw the wounds and that they were dry and healed. Before the magistrate, this witness deposes that he saw marks on the abdomen of the prisoner.

No. 12, *Becharam Biswas*, in this court deposes thus: I heard that there had been an affray and that the prisoner No. 7 had been wounded with shot. I one day saw the prisoner in the house of the prisoner's maternal uncle; saw one wound on the abdomen, it looked like a burn-mark. I asked the prisoner what was the matter with him, he said he had been wounded with shot. I saw only one wound, no other marks were observable. I am a ryot of the Bongram zemindars. I told nobody of this. I only saw the prisoner once. There was a great feud between the Bongram and the Rae kattee zemindars about land.

No. 13, *Sumbhoochunder Konjilal* in this court deposes thus: I heard that the prisoner had been wounded with shot in an affray between the Rae Kattee zemindars; I went one day to see the prisoner, found him sitting in an outer house; on my questioning him he said he was unable to speak much; I saw three or four black marks on the prisoner's abdomen, I could not say how these marks were occasioned, I saw ointment on the chest and abdomen of the prisoner, I went of my own accord, saw the prisoner only once. The marks on the abdomen were round in shape. I am a ryot of the Bongram zemindar. There was a great feud about land between the Bongram and the Rae Kattee zemindars. Before the police, this party deposed that he saw the prisoner twice and that on the second occasion, the prisoner told the witness that one of the shots was still in his body!!

No. 14, *Eshurchunder Ghose* deposes thus: I saw the prisoner one day at his uncle's house, he was sitting and was ill, I asked, what was the matter with him, he said, I was shot in the Rae Kattee affray and I am ill. Saw no marks on his body. Saw ointment on his abdomen, saw him only once.

Before the magistrate this witness deposed that he asked the prisoner no questions and that the prisoner said nothing to him.

Before the darogah of Kewaree thannah, this witness deposed that he saw marks of shot on the abdomen and chest of the prisoner, and that the prisoner told him that one shot was still in his body.

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Before the darogah of the Kuchoa thannah, the witness deposed to knowing nothing about the matter.

No. 15, *Koobeerchunder Gooho* deposes thus: I met the prisoner one day on the road, I saw ointment on his body, I asked him the reason, the prisoner said he had been wounded with shot in the Rae Kattee affray, did not meet him again, did not examine his wounds, told nobody of this. Before the magistrate this witness deposed that he saw four or five men supporting the prisoner. Before the police, he deposes to the same effect.

These five witnesses are the ryots of the Bongram zemindars, in their evidence they admit that there existed a serious dispute between the zemindars of Bongram and those of Rae Kattee about land. The prisoner, it is alleged, is the servant of one of the Rae Kattee zemindars. It must be remembered that the police were for five months searching for the parties supposed to have been wounded in the affray, which took place between the Rae Kattee zemindars. Now, setting aside the improbability of the prisoner who is a man of the pen, taking up a prominent position in a serious affray so as to get wounded with shot, is it likely that he would admit to parties who are ryots of a zemindar who is, or at all events had been on bad terms with his, the prisoner's alleged employers, that he had been shot in the affray? I have pointed out the discrepancies in the evidence of the witnesses and leave it to the Court to decide whether such testimony can be trusted; in my opinion, it is wholly untrustworthy.

In the first report of the darogah dated the 31st October, the day of the affray, the prisoner is not named amongst the wounded, though the burkundazes, who accompanied the darogah and were present during the whole time the affray lasted, deposed that they heard on the above date that the prisoner was amongst the wounded.

The evidence of the medical officer must of course have great weight, but I submit with due deference that it does not necessarily follow, because there are marks on the abdomen and shoulder of the prisoner, which the medical officer deposes are those of shot wounds, that the prisoner was wounded in the affray the subject of this trial. To my unprofessional eye, there are similar marks on other parts of the prisoner's body. The prisoner states that some of these marks were caused by a disease called "*jol bosont*" and that others are eruptions of the skin, I cannot state whether this is the case or not, but this I can state that the evidence is not in my opinion sufficient to establish the charge upon which the prisoner has been committed; I would therefore acquit him.

The prisoner, pending the result of the reference, has been admitted to bail.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur in the exception taken by the sessions judge to the evidence against this* prisoner, as being insufficient for his conviction, and order his release.

* Russomoy Mitter.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

ESHURCHUNDER ROY (No. 6,) AND KHAS MAHOMED (No. 8.)

Backergunge.

1856. September 24. Case of ESHURCHUNDER ROY and another.

Appeal rejected.

CRIME CHARGED.—Affray attended with the severe wounding of Russomoy Mitter and Khas Mahomed, with gun-shot.

CRIME ESTABLISHED.—Affray with wounding.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 19th July, 1856

Remarks by the sessions judge.—In concurrence with the *futwa* I convict the prisoners No. 6, Eshurchunder Roy and No. 8. Khas Mahomed of affray with wounding and have sentenced them as shewn below.

The circumstances of this case are briefly as follows. On the 31st October, 1855, the darogah of thannah Kewaree was on duty in the Rae Kattee village, a petition was presented to him by one Neelmonee Dhopee stating that the prisoner No. 6, and Rajkoomar Roy zemindars of Rae Kattee had collected a very large number of *latteeals* with the intention of breaking up a road to the west of the petitioner's house, as also to plunder the house of a co-sharer in the zemindary Madhubnarain Roy. The darogah with several burkundazes and some of his private servants immediately repaired to the scene of strife. On arriving at the house of the Rae Kattee zemindars, which are brick built and some of which are upper-storied, the darogah found a large body of *latteeals* standing prepared to fight both in the court yards, the lower *verandah*, the upper story *verandahs* and roofs of the houses of the prisoner No. 6, and Rajcoomar Roy and others on the one side, and Madhubnarain Roy on the other side.

The police called upon the parties to desist and to respect the law, but without effect, the battle opened with a shower of brick-bats from both sides, this was followed by a hand-to-hand

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fight between the partisans of both parties. Suddenly two reports of guns were heard proceeding from the direction of Madhubnarain's house, and a rumour was spread that some men had been wounded, this ended the battle. The fighting men on either side retreated within the *pucka* houses of their respective employers. The gates were barred and closed to prevent the ingress of the police.

In such a case, it is useless to expect that any of the neighbours should give evidence; the zemindaree of the prisoner No. 6, and his co sharers extends for some distance round the scene of the affray. The evidence of the burkundazes who accompanied the darogah, some of whom have been a long time at the thannah, sufficiently prove that the prisoner No. 6, was present at the affray, and that though appealed to by the police to use his influence in quelling it, he did nothing of the kind. The prisoner No 8, was recognized amongst those more actively engaged in the affray; this man's body is covered with marks of recent and old spear-wounds, he is unquestionably a professional *latteeal*. The evidence for the defence is utterly untrustworthy. One witness, a menial servant of No. 6, deposes to an *alibi*. This party received two rupees per mensem as salary; his evidence cannot be depended upon. The evidence of the witnesses cited by prisoner No. 8, is equally untrustworthy.

Sentence passed by the lower court.—No. 6, to be imprisoned without irons for four (4) years and to pay a fine of five hundred (500) rupees, and No. 8, to be imprisoned for three (3) years and to pay a fine of fifty (50) rupees, on or before the 18th August, 1856, or in default each to labor (the former without irons and the latter with) until the fines be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J H Patton.) In this case the prisoners have been represented by Kishenkishore, who has argued generally upon the insufficiency of the evidence for their conviction. We hold it, however, to be perfectly trustworthy and conclusive of the guilt of the prisoners. We see no reason to interfere, and reject the appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND JAHABUX NAGARCHEE

versus

SOFFEE ALIAS SOFFEEA.

Tipperah.

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Case of SOFFEE ALIAS SOFFEEA.

Appeal rejected.

CRIME CHARGED.—Wounding with intent to murder Musst. Alluck, niece, and Musst. Lassoon, sister-in-law of the prosecutor.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah, on the 23rd May, 1856.

Remarks by the officiating sessions judge.—It appears that the prisoner finding, when he returned to his house on the night of the 10th Chyte, Ramdass Mundul, witness No. 127, in conversation with Alluckjaun, witness No. 112, with whom he was carrying on an intrigue, was seized with jealousy, and, on her going to fetch a stool from the house, seized her by the throat, some abuse passed between them, when he, taking up a post about five feet long, and as thick as a man's arm, and weighing two *seers* nine *chittacks*, with it struck Alluck a violent blow on the head, which felled her to the ground. This he followed up by a second blow on the right ear as she lay on the ground. And witness No. 13, Musst. Lassoon, coming up to render her assistance and offering to remonstrate with him, he struck her also with the same weapon on the head, stretching her also senseless on the ground. The evidence is clear and conclusive. The civil surgeon describes the wound as of such a nature as to render it for some time doubtful whether the consequences might not be fatal. The wounds, however, healed eventually without the development of any dangerous symptoms. The scalp was laid open to the bone and the civil assistant surgeon, on being shown the weapon with which the blow is said to have been inflicted, expressed his opinion that the wound might have been inflicted with such an instrument, pointing out some ridges or corners in it, which might have made a wound of the nature described by him.

The prisoner's defence is that he found Alluckjaun and Ramdass Mundul conversing together and Ramdass accused Alluck of having an intrigue with him, this was denied, when Ramdass taking up the door bar aimed a blow at him which fell on the door post, he ran out of the house, and Ramdass with the same weapon knocked down Alluckjaun with a blow on the head,

and on Musst. Lassoon coming up, felled her likewise in the same manner. His defence is totally unsubstantiated. The law officer finds the prisoner guilty of the offence charged, and in this finding I concur. The prisoner is deserving of condign punishment. In accordance therefore with Section 2, Clause 3, Regulation XII. 1829, I sentence the prisoner to imprisonment with hard labor in irons for fourteen years from this date.

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Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner makes no further defence than a denial of the offence. This, however, is proved and he has been very properly punished with fourteen years' imprisonment.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

TARACHAND BOSE (No. 1.) BRIJO SINGH (No. 2,) BHOOTNATH SINGH (No. 3,) OBEYRAM RAUT ALIAS RHUBEERAM RAUT (No. 4,) AND SHEIKH KHOSAL (No. 5.)

24-Pergunnahs. 1856. September 24. Case of TARACHAND BOSE and others. Conviction of riot with wounding confirmed.

CRIME CHARGED.—1st count, riot with wounding of Sheikh Bhootye, Sheikh Zimeer, Sheikh Talook, Sheikh Lokhoo and Rumjain Mullick; 2nd count, No. 1, instigating the said riot with wounding of Sheikh Bhootye and others.

CRIME ESTABLISHED.—Riot with wounding.

Committing Officer.—Mr. H. L. Dampier, magistrate of Howrah.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 11th July, 1856.

Remarks by the additional sessions judge.—Bhootye and his four sons (witnesses Nos. 5, 6, 7, 8 and 16,) live at Deepa, and hold rent-free lands there. The prisoner, Tarachand, is the landlord's gomastah, the said landlord being Baboo Rajkisto of Ooterpara, brother of the well known Baboo Joykisto Mookerjea.

The four other prisoners are *lattials* in the Baboo's service. The Baboo, it appears, has been by force and intimidation compelling other rent-free grantees to pay him rent. But Bhootye* would not do so, and an assault having, in consequence, been com-

* Witness No. 5.

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Case of TARACHAND BOSE and others.

mitted on his eldest son, Darasutoollah,* the latter complained and got the first and third prisoners in this calendar punished on the evidence of the witness, Rumzan Mullick,† by the magistrate of Howrah. While this assault case was pending, the prisoner Tarachand, with a body of *lattials*, armed with *lattees*, and headed by their jemadar Salikgram, (not in custody) armed with a sword, proceeded to Deepa, and required Bhootye to accompany them to their master's cutcherry at Ismailpore. He refused, and indeed was too ill to go if he had even consented. Some of the party then dragged him out of his house and began to ill use him as also the Rumzan Mullick above mentioned. A relative of Bhootye's, then on a visit to him, Kadir Bux,‡ seeing this, rushed to a tank where Bhootye's four sons were fishing to summon them to their father's aid. They came and remonstrated, perhaps tried forcibly to rescue him. On this, word was given by Tarachand, (himself standing some distance off) for the so-called "durwans," to attack the party, which was done, and the old man, Bhootye,§ and his three sons, witnesses Nos. 6, 7 and 8, were severely wounded by the jemadar with his sword, and by the other durwans or *lattials* with their clubs. Rumzan Mullick was also severely beaten. The party then appear to have withdrawn.

* Witness No. 16.

† Witness No. 9.

‡ Witness No. 3.

§ Witness No. 12.

The prisoner Tarachand, to be beforehand with the injured party, at once went to the thannah and said he and others, some being his master's "durwans," *(lattials) whose names he did not know*, had been attacked at Deepa by the ryots, beaten and robbed of 211 Rupees. Amongst the attacking party he said were Bhootye and his son, Talook, (witnesses Nos. 5 and 7,) and "others *he did not know*," for it would not have done to have named Darasutoollah who had then a complaint pending in the magistrate's court against him. The real facts of the case, however, were within a few hours made manifest to be, as I have detailed them above, from the evidence produced on the trial.

For the defence it is not attempted to be shewn that Baboo Rajkishto ever did receive rent from Bhootye. No proof whatever is proffered in support of Tarachand's story at the thannah, beyond the ludicrous evidence of witnesses Nos. 21 and 22. The prisoner Tarachand, refuses to make *any* defence or let his witnesses be examined. The prisoner Brijo Singh, No. 2, (a fighting Rajpoot from the Sarun district,) is shewn not to have been wounded‖ the evening after the alleged highway robbery, and no one else pretends to have been so. It is not attempted to be proved 211 Rupees or any Rupees had that day been collected at Deepa, and the *alibi* pleas set up by the three last prisoners in the

‖ Witness No. 23.

calendar have altogether and signally failed. The case is most satisfactorily and sufficiently proved, and in concurrence with the law officer, I convict all the prisoners of the charge of riot and severe wounding, and sentence them as follows. Tarachand (a somewhat aged cripple) who was the person to carry out his master Rajkishto's violent and illegal orders, will be imprisoned for three years without labor or irons. The other four, who are *lattials*, and men of violence by profession, will be each imprisoned for five years with labor and without irons.

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Case of TARACHAND BOSE and others.

Remarks by the Nizamut Adawlut.—Present: Messrs. B. J. Colvin. and J. H. Patton.) The evidence is sufficient for the conviction of the prisoners. They have not attempted in their petition of appeal to show that it is in any way defective. We see no reason to interfere with the sentences passed upon them, and reject their appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

TRIAL NO. 2.

GOVERNMENT AND MUDDUN SHA

versus

ASHKUR *alias* ASHGUR (No. 1.) GODA DHOOBEE (No. 2.)

TRIAL NO. 3.

GOVERNMENT AND BINDABUN SHA

versus

ASHKUR *alias* ASHGUR (No. 3,) GODA DHOOBEE (No. 4)

TRIAL NO. 4.

GOVERNMENT AND GOKOOL SHA

versus

ASHKUR *alias* ASHGUR (No. 5,) GODA DHOOBEE (No. 6.)

Mymensingh.

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Case of SHEIKH ASHKUR *alias* ASHGUR.

Appeal rejected.

CRIME CHARGED.—Trial No. 2, 1st count; robbing the prosecutor on the highway of cash and property valued at Rs. 116-3-10; 2nd count, No. 1, knowingly receiving and retaining the property so acquired. Trial No. 3, 1st count, robbing the prosecutor on the highway of cash and cloths valued at Rs 87-3; 2nd count, No. 3, knowingly receiving and retaining the property so acquired. Trial No. 4, robbing he prosecutor on the highway of cash and cloths valued at Rs. 75-12; 2nd count, No. 5, knowingly receiving and retaining the property so acquired.

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Case of SHEIKH ASHKUR *alias* ASHGUR.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T Trotter, sessions judge of Mymensingh, on the 11th June, 1856.

Remarks by the sessions judge.—Trial No. 2.—Information was lodged at the thannah by the prosecutors Muddun Sha, and Gokool and Bindabun Shas. prosecutors in cases Nos. 3 and 4, that on the 21st or 22nd of Cheit last at about one *prohur* after nightfall when returning from Cheranger *hát*, where they proceeded for the purpose of selling cloth, they were attacked by some eight or nine persons in a Hawur called Sheebooter and robbed of their property consisting of cash and cloth-pieces. On the darogah commencing to investigate the matter, suspicion having fallen upon the prisoners, owing to their notorious bad character, they were apprehended and they confessed, and No. 1, gave up a part of the plundered property which he had concealed in a jar under ground. Before the magistrate No. 2 repeated his mofussil confessions, but No. 1 denied. In this court they both pleaded innocence and No. 1 stated that he has been falsely charged by one Rugho Biswas and Bossurah who are at enmity with him regarding talook, and that the darogah on having failed to seduce his wife, has brought this false charge against him in collusion with his enemies, No. 2 urged that his mofussil confession was extorted by ill-treatment and that he was instructed to make a similar confession before the magistrate. The evidence recorded on the trial clearly brings home the charge to the prisoners and that they voluntarily confessed before the police, and No. 2 before the magistrate, has been clearly proved and No. 1 gave up a part of the stolen property which has been identified by the prosecutors and their witnesses as belonging to them, although No. 1 denied the charge both in this and the lower court, and examined some witnesses to prove, his innocence, their evidence was rather unfavorable to them; and witness No. 23, Moyrumee Bewah mother-in-law of the prisoner No. 1, stated that one day in Cheit last at the dead of night she came out of the house she slept in and seeing a light in the house of the prisoner went to inquire the cause, and there saw a bundle of clothes before him. The prisoners are of notoriously bad character and the terror of the neighbourhood they live in, and No. 1, was only last year convicted by me on a charge of dacoity, but was acquitted by the superior Court. The jury convict the prisoners of the crime charged and concurring in this verdict, I sentence them in three cases to ten years' imprisonment with labor and irons in banishment.

Trial No. 3.—The history of this case will be found in the preceding case (No. 2,) where the grounds of conviction and sentence have been fully detailed.

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Case of SHEIKH ASHKUR *alias* ASHGUR.

The crime which the respective prosecutors charge the prisoners with, was committed at the same time and both the prisoners before the police and No. 4, before the magistrate confessed to the crime and a part of the plundered property was found with No. 1. In this court they both plead *not guilty*, but on the grounds recorded in case No. 2, I convict them of the crime charged, in concurrence with the verdict of the jury.

Trial No. 4.—This case is similar to that of No. 2, tried by me this day, the crime and the parties being the same.

The prisoners plead *not guilty*, but on the grounds detailed in case No. 2, I convict them of the crime charged, in concurrence with the verdict of the jury.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The confession of prisoner No 2. and the delivery of property by the prisoner No. 1, are strong grounds for presuming the guilt of both these prisoners. I see no reason to doubt the propriety of this conviction and therefore reject this appeal.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, Esqs.,
Officiating Judges.

GOVERNMENT
versus
MUDHOO PAKHOORIAH.

Midnapore.

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Case of MUDHOO PAKHOORIAH.

Prisoner convicted on his own confession, corroborated by evidence of the occurrence of the particular dacoities to the perpetration of which prisoner confesses, of having belonged to a gang

CRIME CHARGED.—1st count, dacoity in the house of Bishoonath Sawunt inhabitant of Burampore, of thannah Bagman, adjoining to zillah Habrah; 2nd count, having committed a dacoity on 6th December, 1850, in the house of Anund Sawunt, resident of Chuckhurry Rampore, thannah Purtabpore; 3rd count, having committed a dacoity on 25th May, 1852, in the house of Dulal Dass, resident of Kapashberriah, thannah Puddoobussan, and 4th count, being by profession a dacoit and having belonged to gangs of dacoits under Sirdars Moocheeram Kharah, Pershad Kharah, and others (convicts).

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and assistant to the dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 7th August, 1856.

Remarks by the officiating sessio..s judge.—The prisoner in this court pleads "*guilty*" to all the charges on which he is arraigned, without any qualification or reservation; he repeated

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of dacoits and sentenced to imprisonment for life.

his affirmative answer, declaring he did so of his own free-will. His confession before Captain Keighly, assistant commissioner for suppression of dacoity is proved to have been voluntarily made by the two attesting witnesses.

In it up to the time of his commitment he confessed to no less than twenty-one heinous crimes, including dacoities, burglaries and highway robberies and appears to have afterwards enumerated other crimes in which he had been engaged.

The witness No. 3, of this trial Pershad Kharah identifies the prisoner and swears that he remembers two dacoities, one in the house of Bishoonath Sawunt of Laopotah, and the other in that of Anundee Bearer of Chilka, in which he and the prisoner took a part.

In corroboration of the prisoner's confession the record of three cases noted in the margin* have been submitted.

From the record No. 75, it appears a dacoity was committed on the 31st March, 1849, in the house of Bishoonath Sawunt, in the village of Burampore, it is called Laopotah, by the prisoner and the witness Pershad Kharah. No mention, however, is made of the prisoner or witness in the record.

The record of the second dacoity numbered by the committing officer, No. 242, but on the record as No. 424, and "heinous" No. 238, shows that a dacoity occurred in the house of Anundee Sawunt, on the 6th December, 1850. On the 7th idem, prosecutor swore he recognized Goramporiah Chowkeedar, Sreemunt Aduck, Anundee Myttee, Gour dufturee, and his brothers Keenoo Singh and Modun Singh.

The house of Gour dufturee, was surrounded and Muthoor Myttee arrested as he issued from it with a bundle of property, which prosecutor swore to be his. The prosecutor afterwards named Kashee Singh, as having been recognized by him as one of the dacoits. Muthoor Myttee, Keenoo Singh, and Kashee were convicted by the sessions judge, but acquitted by the superior Court on the 21st March, 1851. Neither the name of the prisoner Mudhoo Pakooriah, nor of witness No. 3, Pershad Kharah, appears in this record.

The third dacoity charged appears from the record of the case No. 483, to have been committed in the house of Dulal Dass, in the village of Kapashberriah, on the 25th May, 1852, four prisoners were committed for trial at the sessions and were each sentenced to seven years' imprisonment; this sentence was confirmed by the Nizamut Adawlut by their proceeding dated 3rd September, 1852, as regarded the only prisoner, Gunesh Mondol, who appealed. So there is no reason to doubt the occurrence

* *Nuthee* No. 75, dacoity in the house of Bishoonath Sawunt.
Nuthee No. 242, dacoity in the house of Anund Sawunt.
Nuthee No. 483, dacoity in the house of Dulal Doss.

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of the dacoity. In this case also the names of the prisoner and witness do not appear.

There is no doubt from the records that the dacoities did actually occur. That the prisoner belonged to the gangs which committed them is fully proved by his voluntary confession, made before the assistant commissioner for the suppression of dacoity, and his unqualified admission of his "guilt" before this court, when put on his trial, I therefore convict the prisoner of the dacoities with which he is charged and with being by profession a dacoit and having belonged to a gang of dacoits and would recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor) The prisoner confesses to having committed twenty-nine heinous crimes, including seventeen dacoities, three highway robberies, and seven burglaries, one theft and one case of drugging.

Witness No. 3 swears that he remembers having committed two dacoities with the prisoner; as, however, in the records of the cases, no mention is made either of the prisoner, or of the witness, and as the evidence of the witness is uncorroborated by any testimony of any sort, it is in its present shape altogether worthless. The records of those cases produced, show that dacoities actually occurred in the houses of the parties whose names were mentioned by the prisoner, but the name of the prisoner himself does not appear upon the record, and in one case a sentence of seven years passed upon four prisoners was confirmed by the Nizamut Adawlut.

We consider the evidence of the occurrence of these three dacoities sufficient corroboration of the truth of the prisoner's statements regarding his own part in their perpetration; we therefore find him guilty of having belonged to a gang of dacoits and sentence him, as recommended by the sessions judge, to imprisonment for life.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND MONIR SHIKDAR
versus
ABOOL HOSEIN.

Backergunge.

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Case of ABOOL HOSEIN.

Sentence passed by the sessions judge confirmed, the evidence of the witnesses for the prosecution having been clearly and circumstantially given.

CRIME CHARGED.—Severely wounding Monir Shikdar, with intent to kill.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 20th June, 1856.

Remarks by the sessions judge.—This is a bad case, the wounded man and the prisoner No. 1, Abool Hosein, are connections by marriage; the prisoner had formed an improper connection with his mother-in-law, the wounded man remonstrated with the prisoner and pointed out to him the impropriety of his conduct: this was the cause of the murderous attack upon the prosecutor. The charge is clearly proved and in concurrence with the *futwa*, I convict the prisoner No. 1, Abool Hosein of severely wounding Monir Shikdar, with intent to kill.

The wounds were of a very serious nature and were inflicted with a sharp-cutting instrument, the nature of the weapon used, the number of the wounds nine, and their character evince an intent to kill. The defence set up, an *alibi*, which has not been proved. I have sentenced the prisoner as shewn below.

Sentence passed by the lower court.—Imprisonment for ten years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We see no reason to interfere with the sentence of the sessions judge. Two witnesses were present, when prisoner wounded the prosecutor on the quarrel arising between them; and their evidence is given clearly and circumstantially.

PRESENT:
H. T. RAIKES, ESQ., *Judge*,
J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

MAHOMED ZUKEE

versus

BOLIENATH (No. 1,) AND SHEIKH TOPIE CHOWKEEDAR (No. 2.)

Sylhet.

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Sentence passed on the prisoners by the sessions judge confirmed, the majority of the Court being of opinion that, notwithstanding the absence of a post mortem examination and the non-ascertainment of the particular drug administered, the evidence altogether was quite sufficient to establish against the prisoners, the crime of which they had been found guilty by the sessions judge.

CRIME CHARGED.—1st count, No. 1, culpable homicide of Musst. Gouree by administering and causing to be administered medicine to procure abortion; 2nd count, No. 2, being accessary after the fact of the first count.

CRIME ESTABLISHED.—No. 1, culpable homicide of Musst. Gouree; No. 2, being accessary after the fact of the culpable homicide of Musst. Gouree.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 27th March, 1856.

Remarks by the officiating sessions judge.—On the 30th January, 1856, Mahomed Zukee, the prosecutor, deposed at the thannah of Latoo, that Musst. Gouree (the deceased) wife of Akyenath, aged about twenty-seven or twenty-eight years, had been with child in consequence of her intimacy with Bolienath; (prisoner No. 1.) that the prisoner with the intent of procuring abortion administered drugs to the deceased and which caused her death on the 16th November last, corresponding with the 1st Agrun, 1262, B. S.; that Topie Chowkeedar (prisoner No. 2,) and the Merasdar of the pergunnah, in the first instance, prevented the corpse of the deceased being buried, but on being bribed by prisoner No. 1, they subsequently ordered the burial of the deceased and concealed the crime. The darogah held an investigation and forwarded prisoners, Nos. 1 and 2, to the magistrate, who committed them to take their trial at the sessions court on the following charges, first charge against prisoner No. 1, "culpable homicide of Musst. Gouree by administering and causing to be administered medicine to procure abortion, second charge against the prisoner No. 2, being accessary after the fact of the 1st count." The prisoner before this court pleaded *not guilty*, but it appears that prisoner No. 1, confessed to the darogah to the effect that he had an intimacy with the deceased and she had been with child by him and was four months gone; that he in order to cause abortion, procured

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some drugs from one Ootum, a barber, and administered them to her which caused vomiting and burning pains over the body; that on the following day the prisoner got some drugs from one Shamnath and on administering them to her, she had a miscarriage and of which she died. The prisoner made the same statement before the magistrate as he had made before the police; prisoner No. 2, voluntarily confessed before the police and the magistrate that the deceased had died from the effects of the drugs administered to her to procure abortion, but when the neighbours offered him as a bribe a *thalee* and a pair of *kurthals* (the property of prisoner No. 1,) he did not make any complaint at the thannah, but ordered the body to be buried. The same statement was repeated by the prisoner before the magistrate, differing only on the point that he had not given any information at the thannah from fear, and the risk he was told he would be subjected to afterwards, by giving such information. These confessions are proved by the evidence of the subscribing witnesses thereto to have been voluntarily made.

Musst. Radhee, the wife of the prisoner No. 1, and the only eye-witness in the case, deposed to the fact that the deceased was with child by Bolienath (prisoner No. 1,); that when she was gone four months, the prisoner administered drugs to her to procure abortion which caused vomiting and burning pains over her body and she died on the following day from the effects of the drugs administered to her; that afterwards (prisoner No. 2,) in consultation with the *Merasdar* at first refused to allow the deceased's body to be buried, but on being bribed by the neighbours ordered her to be interred. It is also established by the circumstantial evidence that an intimacy existed between prisoner, No. 1, and the deceased; that prisoner No. 1, administered drugs to her to procure abortion, and signs of a miscarriage, such as blood, &c., was perceived on the body of the deceased, and lastly, the witnesses heard, that prisoner No. 2, was bribed by the neighbours. Under these circumstances, I, in concurrence with verdict of the assessors, convict prisoner No. 1, of the culpable homicide of Musst. Gouree and prisoner No. 2, of being an accomplice after the fact of the culpable homicide, and sentence them as follows.

Sentence passed by the lower court.—No. 1, to be imprisoned for four years, and No. 2, for two years, both without irons, and to pay a fine of Rs. 30 each on or before the 5th April, 1856, or in default of payment to labor until the fines be paid or their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. S. Torrens and C. B. Trevor.)

Mr. H. T. Raikes.—There was no *post mortem* examination nor is there any proof of the nature or properties of the drugs said to have been administered. I think it very unsafe to convict

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of culpable homicide on the mere statements of the neighbours as to the cause of death in this case. Both prisoners, I think, should be released. Send the case for another voice or to Nizamut Bench.

Messrs. J. S. Torrens and C. B. Trevor.—We are of opinion that the evidence is quite sufficient in this case to sustain the conviction. There are the confessions of the prisoner Bolienath, both before the police and before the magistrate; and these confessions are supported by the evidence of Radhee Goognee and by the other witnesses in this case; and are not contradicted by any thing on the record.

From the confessions of Bolienath, it appears that he administered the medicine, whatever it may have been, which led to the death of the woman Gouree, with the intent of causing abortion. It appears from Radhee Goognee's evidence, that she saw the prisoner No. 1, administer it; it appears also that an intimacy existed between the deceased and the prisoner; and moreover that the deceased being four months pregnant by him, died suddenly with symptoms which usually attend abortion caused by criminal violence. Under these circumstances, though undoubtedly the case would have been stronger had the body been in a state to admit of examination, and had it been possible to ascertain the particular drug which had been administered, we consider the crimes of which they have been found guilty, sufficiently established against the prisoners, and see no reason to interfere with the sentence which has been passed upon them.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND JAN ALLY

versus

CHOORAMUN SINGH.

Patna.

1856.

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Case of CHOORAMUN SINGH.

The conviction of *theft* with severe wounding not being sustained, held that Section 8, Regulation XVII. of 1817 was inapplicable to the case. The prisoner was convicted of wounding to the danger of life.

CRIME CHARGED.—Theft with severe wounding of the prosecutor.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 6th September, 1856.

Remarks by the sessions judge.—The prisoner pleads *not guilty.*

Prosecutor is servant of Chutturdharee and others, proprietors, he was employed in watching their mango tope at two rupees per month, he applied for some wages but was told that the mangoes were constantly being stolen and that he deserved nothing, on this he kept strict watch and caught prisoner and others in the act, with the bags, stealing the mangoes. He called out and they ran away, he pursued them when Chooramun, prisoner turning round wounded him with a spear. Mungur, witness No. 1, was also watching in the same tope and, hearing Jan Ally call out, he ran in the same direction and saw Chooramun turn round and wound Jan Ally. Chaitoo (witness No. 2,*) then came up and seized Chooramun, then Chutroo, Jhingun and Khooshee Pauree, witnesses Nos. 6, 7 and 8, came up and completed the seizure. They found Jan Ally, on the ground *behosh*, and took him to the thannah, the prisoner, being first taken to the mango-tope, where prosecutor's employers and a number of others were collected, attracted by the noise, was also afterwards taken to the thannah. The medical evidence (Dr. Dicken, witness No. 3,) deposes to the wound having endangered life. The prisoner is also a part owner of the mangoes in a tope close by.

Prisoner's defence is, that he was watching with Jan Ally, when Chutroo and Choolun and Mungur came to steal mangoes, that they prevented and tried to seize them when Chutroo wounded prosecutor with a spear. Shewchurn, witness for the defence, deposes that prisoner has a four-anna share in a mango tope and that the other owners tried to persuade him to sell it,

* This witness was not in attendance in the sessions court being reported insane. He had previously been in the Patna Insane Hospital. His evidence is not essential to the prosecution.

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failing in which, they threatened to be even with him, and eventually brought this charge against him. Chutroo Singh, witness No. 2 deposes to having been present when prisoner purchased the four-anna share in the mango tope from a Gossain in opposition to the wishes of the other twelve-anna sharers who also wished to purchase. Jewlall, witness No. 3, tells the same story adding that the twelve-anna sharers threatened Chooramun and eventually beat him and brought this charge of theft against him, he further states that prisoner is a respectable person and servant of a muhajun. Koonjbeharee Singh, No 5, deposes to there being enmity between Chooramun and Chaitoo (witness for prosecution No. 2 not present), but does not give any reason for the same, says Chooramun is a respectable person and servant of one Ramlall mahajun.

The jury gave a verdict of guilty in which I concur.

The evidence for the prosecution is quite clear and satisfactory, there is only one eye-witness to the actual infliction of the blow by Chooramun, but the circumstantial evidence is complete, the prisoner was caught in the act, pursued and taken, wounding the prosecutor when about to seize him. The severe wound, the spear on the ground, the prisoner in the hand of Chutroo are all distinctly sworn to and bear evidence quite as convincing to the court as that of Chutroo himself could have been. The defence is throughout contradictory and unsound, the tale told at the thannah does not agree with that told to the magistrate or before this court, all three accounts, in fact, are materially different and the witnesses for the defence go into matter not alluded to even by the pris ner himself.

The wound was a most severe one, certainly endangering life, and the robberry or atttempt to rob evidenced by the other facts of the case though not distinctly sworn to by any of the witnesses before this court. I convict the prisoner Chooramun, of theft with severe wounding of Jan Ally, prosecutor, and beg to refer this case under Section 8, Regulation XVII. of 1817, recommending that the prisoner Chooramun, be imprisoned for seven years with labor in irons There is no record to be found of former imprisonment, but in his defence before the magistrate he voluntarily admitted having been imprisoned for two months for oppression in enforcing illegal payment from travellers at a ferry.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We do not see why the sessions judge should not have passed sentence in this case himself. He states that the robbery, or attempt to rob, was not proved by the witnesses in his court, the law cited by him therefore does not apply. We convict the prisoner of wounding to the danger of life, and sentence him to seven years' imprisonment with labor in irons.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND PARUSDAS

versus

CHUNDEE SINGH ALIAS CHUNDOO SINGH (No. 7,) ANDO MAHTON (No. 8,) CHOONEE SAHOO (No. 9,) GULLOO SINGH (No. 10,) UMRIT SINGH (No. 11,) LULIT SINGH (No. 12,) KHOOSROO MISSER (No. 13,) LOCHUN SINGH (No. 14,) AND JEETUN SINGH (No. 15.)

Bhaugulpore. 1856. September 25. Case of CHUNDEE SINGH *alias* CHUNDOO SINGH and others. Appeal rejected.

CRIME CHARGED.—1st count, dacoity and plunder of property valued at Rs. 937-15-6; 2nd count, receiving and possessing plundered property, knowing at the time of receiving it that it had been obtained by dacoity.

CRIME ESTABLISHED.—Same as crime charged.

Committing Officer.—Mr. A. E. Russell, magistrate of Bhaugulpore, on the 17th June, 1856.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 17th June, 1856.

Remarks by the officiating sessions judge.—This case was tried at Bhaugulpore, under the provisions of Act XXIV. of 1843, on the 11th, 12th, 14th, 16th and 17th June, 1856.

The prosecutor is the mohurrir of Ranee Bhowanibuttee, and was absent on the night of the dacoity with his employers, information was sent to him as also to the police chowkee, which was distant half *coss* from prosecutor's house; before the latter arrived the police had commenced to make enquiries from the servants and inmates of the house, when it was discovered that on the night of 7th February, 1856, about fifty armed dacoits entered the prosecutor's house and plundered property valued Rs. 937-15-6. The prosecutor suspected one Duttoree the son of his servant Bikaree Rout, and Munnoa Rout, witness No. 1, to the fact identified, prisoner No. 7, who had a lighted torch in the left hand, and with a *lattee* in the right, he inflicted a blow on witness's head which felled him to the ground and rendered him insensible, after this witness cannot state what occurred, further than when the dacoits had decamped, on recovering himself he found that all the prosecutor's property had been plundered. The police proceeded to Duttoree's house, who denied having committed the dacoity, but informed them that during the night about seventeen men passed his house; he enquired who they were, one amongst them, prisoner No. 12, replied it was Lulit Singh. Jeetun and Kunjul had two bundles on their heads, and No. 12 told him they had committed a

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dacoity in prosecutor's house, and were taking away the spoil, he followed them when Lulit enquired of him where he was going, he replied he would accompany them, to which they agreed. On arrival at Lulit's house, the property was placed in his *verandah*, they promised to give him a portion of the property, for this reason he did not inform against them. The police then proceeded to Lulit's house, where they found prisoners Nos. 7, 11 and 12, seated on a *rezaye*, and before them were some silver ornament and brass cup, all of which the prosecutor's connection claimed; (the prosecutor being infirm did not accompany the police,) the statement of these men was taken when they confessed to having committed the dacoity and implicated prisoners Nos. 9, 10, 11, 12, 13, 14 and 15, also Kunjul, Buttu Raye and Talu, and on their houses being searched a quantity of property belonging to the prosecutor was found. Prisoner No. 7 gave twenty rupees twelve annas to his mistress No. 16, to keep, threatening her, that if she did not take it, although it was obtained by dacoity, he would maltreat her. This amount was found on her person. The police having obtained a clue to the other prisoners they proceeded to their houses which were immediately searched when further property was discovered belonging to the prosecutor, the prisoners not only confessed to the commission of the crime, but pointed out other property they had concealed in various other places. Amongst the prisoners sent in by the police for trial, Nos. 7, 8 and 16 confessed before the magistrate, the remainder denied the charge. Prisoner No. 7, is a bad character, and has recently been released from jail, he was sentenced to two years' imprisonment in a case of theft and punished for an affray.

The evidence for the prosecution I consider satisfactory, and fully establishes the guilt of the prisoners. Witness No. 1, proves the fact of the dacoity having taken place, for he was present on the occasion, identified prisoner No. 7, and received from him a blow with *lattee*, the mark of which he bore when he appeared before the police, but it has since healed.

Witnesses Nos. 4, 20, 23, 28, 29, 30, 33 and 34, are aware of the circumstances, saw the dacoits armed at the distance, who threatened them, if they approached, but could not recognise them.

Witnesses Nos 2, 3, 6, 7, 8, 10, 11, 13, 15, 16, 17, 18, 19, 23, 28, 29, 30 and 33, prove the finding of the prosecutor's property, in the prisoners' houses and identify a large portion of it, and witnesses Nos. 2, 21, 22, 23, 18 and 19, declare that the confessions of the prisoners before the police were voluntary.

Witnesses Nos. 25, 26 and 27, depose to confessions of prisoners Nos. 7, 8 and 16, taken before the magistrate as being also voluntary.

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All the prisoners before this court plead *not guilty*, urging that it was in consequence of the maltreatment, they received from the police, that they confessed, and that the property found in their houses, &c., belongs to them. Witnesses Nos. 35, 37, 38, 39, 42, 43, 45, 46, 47, 48, 49, 50, 8, 52, 56, 57, 58, 59, 62, 63, 64, 65 and 68, have been heard both as regards their defence and character. they have failed to establish their right to the property, nor can they depose to any thing satisfactory in their behalf. After a careful comparison of the property found in the prisoners' houses with that recorded in the prosecutor's list, I find several articles excessive, which both have failed to identify, this is evidently suspicious property, which I have ordered to be confiscated. The magistrate failed to separate the property identified by the prosecutor from that not recorded in his list, but forwarded the whole to this court, which caused considerable confusion and inconvenience during the trial. I have brought this circumstance to his notice, and considering the charge proved against the prisoners, I sentenced them accordingly.

Sentence passed by the lower court.—No. 7. fourteen years' imprisonment and Nos. 8 to 15, ten years' imprisonment each, all with labor and irons, and to pay a fine of Rs. 653-2-2, under Act XVI. of 1850, jointly and severally, as compensation for the loss sustained by Parusdas prosecutor.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The property found and, on the trial, declared by the prisoners to be their own, has not been identified by their witnesses, and its possession therefore tells heavily against the prisoners.

I see no reason to interfere and therefore reject this appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

FAKIRCHAND MUNDUL (No. 2,) MOHESHCHUNDER DUTT (No. 3,) SREENATH BOSE (No. 4,) FELOO ROY (No. 5,) RAMTUNOO MUNDUL (No. 6,) PUNCHRAM* MUNDUL (No. 7,) GORACHAND* MUNDUL (No. 8,) HURI* MUNDUL (No. 9,) RAMLOCHUN* BISWAS (No. 10,) FOIZOODDEEN* SHEIKH (No. 11,) TACOOR* DOSS (No. 12,) FAKIRCHAND* MUNDUL (No. 13,) AND RAJCHUNDER* SHEELAL (No. 14.)

Jessore.

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Case of FAKIRCHAND MUNDUL and others.

Conviction of affray attended with severe wounding confirmed.

CRIME CHARGED.—1st count, affray attended with the severe wounding of prisoner No. 14, (Rajchunder Sheelal,) on the one side and the slight wounding of prisoner No. 6, on the other side, on the 4th of December, 1855, corresponding with the 19th Ughran, 1262, B. S.; 2nd count, Nos. 2 to 6 are charged with riot resulting in the severe wounding of the prisoner No. 14 and with forcibly cutting the *dhan* belonging to the defendant No. 12, (Tacoor Doss Mundul,) on the 4th of December, 1855, corresponding with the 19th Ughran, 1262, B. S.

CRIME ESTABLISHED.—Nos. 2 to 6, the second count of crime charged.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 16th June, 1856.

Remarks by the officiating sessions judge.—The commitment in this calendar of prisoners Nos. 7, 8, 9, 10, 12 and 13, was cancelled, it appearing from an examination of the records that these persons had never been legally put upon their defence, the statements without solemn affirmation they had given originally, when there was not any charge against them, being very irregularly taken as their replies before the magisterial court. A copy of the order† cancelling the commitment of the

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* Acquitted by the lower court.

† From the officiating sessions judge of Jessore, to the officiating magistrate of Jessore, No. 90, dated the 7th June, 1856.

With reference to a decision of the Nizamut Adawlut, under date the 19th January, 1849, returning as quashed the proceedings of this court, on a trial of certain parties committed for forgery, wherein it appeared one of the parties committed had never been put on his defence before the foujdary court, I beg to observe the commitment by you of the prisoners

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above persons is appended to these proceedings. The trial was postponed for two days from the 9th to the 11th instant in compliance with an application* on the subject from the officiating magistrate of Jessore, a copy of which is herewith appended.

From the evidence on the part of the prosecution, it appears that about 9 o'clock A. M. of the 4th December, 1855, a large party of persons armed with *lattees*, &c., among them prisoners Nos.* 2, 3, 4, 5 and 6, recognised as being connected with the Oolah Indigo-Factory, came to a field in the village of Bamundanga and cut the crop of *dhan* on it, which they carried away. The field in question

* Fakirchand.
Moheshchunder.
Sreenath Bose.
Feloo Roy.
Ramtunoo.

Nos. 7, 8, 9, 10 and 13, of calendar No. 2, of May, appears to me exceptionable, inasmuch as from the records, the deputy magistrate of Khoolneah, does not appear to have ever put the abovementioned parties on their defence, but merely demanded from them the names of their witnesses telling them at the time that the statements they had before given (when there did not exist any charge against them,) would be taken by him in lieu of any detailed defence.

Such a proceeding being both irregular and illegal, with reference to prisoners Nos. 7, 8, 9, 10 and 13, I consider, as they never have been legally put on their defence before any foujdary court, it is necessary for me to quash the commitment. The case with regard to them, I remand, that the prisoners may be put on their defence, that the evidence of the witnesses against them may be taken *de novo* and the prisoners called on to name their witnesses, which completed, it will rest with you to commit them for trial as you think proper.

From the officiating sessions judge of Jessore, to the officiating magistrate of Jessore, No. 92, dated the 9th June, 1856.

From the records of the case committed as per calendar No. 2, of May, I regret to find the prisoner No. 12, Tacoor Doss has never been put on his defence, the deputy magistrate of Khoolneah, having taken the same course of proceedings with him as with the parties whose commitment was quashed by my letter No 90, of the 7th instant.

It is my duty to quash the commitment of this prisoner No. 12, and to direct that you will carry out with regard to the prisoner, the directions issued with reference to prisoners Nos. 7, 8, 9, 10 and 13, of the same calendar.

* From the officiating magistrate of Jessore, to the sessions judge of Jessore, No. 314, dated the 7th June, 1854.

I have the honor to acknowledge the receipt of your letter No 90, dated this day.

The defendants against whom the commitment has been quashed have only named, as witnesses, those persons who will appear upon the 9th (the day fixed for the trial) on which date their evidence can be taken, and if you could postpone the trial of the case for two days, much time and unnecessary trouble might be saved by the whole of the prisoners being tried together as originally intended, the witnesses also would be saved a great deal of inconvenience as well as the defendants, who have been a very long time in *hajut*.

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was cultivated by the prisoner* No. 12, (whose commitment was cancelled as abovementioned) who seeing his property being taken away called out for assistance. The aggressing party retreated for a time, but returned in force again and then commenced a riot in which prisoner† No. 14. received in his thigh a sharp instrument termed in the vernacular *aro*, and which as it is before the court, having been extracted while the prisoner was in hospital, I can best describe as a sharp three-pronged instrument similar to what is used for harpooning fish. On the prisoner's receiving this severe wound, all parties seem to have separated. The wound was severe inasmuch as it was near a vital part, was made by a sharp and jagged instrument, and so difficult to extract. The prisoner No. 14, Rajchunder, was for many months in hospital, and though now recovered, has yet undergone such suffering as will, in the opinion of the native doctor, whose evidence is on the record, for some time materially affect his general health. It does not appear in evidence that the second party of which prisoner No. 14, Rajchunder, was a member, were actually armed with any weapons, or that by any previous preparation they were ready and intent to meet their adversaries in the field of combat.

* Tacoor Doss.

† Rajchunder.

The witnesses are, for the most part, connected with the party assailed and some of them, witnesses Nos. 2 and 4, have made contradictions and discrepancies in their evidence in this court, as compared with what they said before the foujdary, which they have failed to explain away satisfactorily. Considering, however, the length of time that has elapsed since their original depositions were taken, it appears to me the evidence, which is best supported by the circumstances of the case, is that the party of which were prisoners (No. 2,) Fakirchand, (No. 3,) Moheschunder Dutt, (No. 4,) Sreenath Bose, (No. 5.) Feloo Roy, and (No. 6.) Ramtunoo, committed the aggression and came prepared with arms to carry into execution their purpose if resisted.

These parties (with the exception of prisoner No 6, Ramtunoo,) plead *not guilty* with *alibis* as their defence, and that the charge has been instituted out of malevolence by Moloov Doss, and Gungagobind Doss, proprietors of the land, the crop of which was cut, and which belonged to their ryot. Tacoor Doss.

The prisoner (No. 6,) Ramtunoo, while pleading *not guilty* to the charges, states he went to the field, the subject of dispute, as it was under his cultivation. His witnesses know nothing in his favor.

The witnesses cited by the prisoners (No. 2,) Fakirchand, No. 3, Moheschunder, No. 4, Sreenath Bose, and No. 5. Feloo Roy, give evidence in support of the pleas of *alibi* set up by the

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accused. Those cited by prisoner (No. 5,) Feloo Roy, add that causes of animosity have long existed between him and Molooy Doss, &c., the proprietors of the field, the cause of dispute.

The trial was conducted under the provisions of Act VI. 1832, with the aid of a jury. With regard to the prisoners named in this statement after weighing the evidence adduced in support of the charge and the defence of the accused, the jury found a verdict of guilty on the 2nd count, of prisoners (No. 2,) Fakirchand, (No. 3,) Moheschunder, (No. 4,) Sreenath Bose, (No. 5,) Feloo Roy, and (No. 6,) Ramtunoo.

In this verdict I agree and sentence each of the prisoners (No. 2,) Fakirchand, (No. 3,) Moheschunder, (No. 4,) Sreenath Bose, (No. 5,) Feloo Roy, *alias* Madup Doss, and (No. 6,) Ramtunoo, to imprisonment with labor for two years, the penalty of labor to be commuted on payment within one month of a fine of rupees fifty, or in default the prisoners to be subjected to labor until such fine be paid or if not paid, until the completion of the term of their sentences.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We have examined the proceedings in this case, and find that there is quite sufficient evidence for the prosecution to sustain the conviction. The plea of *alibi*, set up by the prisoners is evidently false, and the answer of prisoner, No. 6, is corroborative of the proof of the charge. We reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BRIJU ALIAS BRIJI GHOSE.

Hooghly.

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Case of BRIJU *alias* BRIJI GHOSE.

Conviction of dacoity confirmed.

CRIME CHARGED.—1st count, dacoity on the night of the 10th August, 1849, on the boat of Parbuttychurn Mitter, near Kalleenuggur, thannah Hutra, zillah Nuddea; 2nd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity and having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, dacoity commissioner, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 29th May, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with having been concerned in the river-dacoity, near

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Kalleenuggur, on the night of the 10th August, 1849, and with having belonged to a gang of dacoits.

The two approver witnesses confessed to this dacoity on the 19th January, and 9th June, 1854, respectively, denouncing the prisoner as an accomplice. This they have now done again before me on oath, and have named, the first approver, five out of six, and the second eight out of nine, of the associates they denounced originally. Their account of the particulars of the offence equally tallies with that previously given.

The circumstantial evidence in support of the above testimony is ample. On the 24th August, 1849, fourteen days only after the dacoity, the prisoner was informed against at the thannah, and some new cloth was found on his house being searched, which the prosecutor declared was the part of that stolen from him. On the same day, the prisoner was seized and confessed, but as he retracted his confession before the magistrate, he was discharged. The next day, the 25th August, the chowkeedar went to the thannah, and deposed that he had been making enquiries and ascertained, the prisoner, *the second approver witness*, and others had been concerned in this dacoity. The prisoner was then made to furnish security for future good behaviour, when one Boykunt Mozoomdar, became his surety, the very person with whom the approvers say the stolen property was left in deposit, and also they add the person to spite whom the information had been lodged at the thannah, by one Gungaram Bhuttacharjee. Lastly, the prisoner was in 1851, again brought up as a person of notorious bad character, and again compelled to produce security for future good conduct by the magistrate of Nuddea. On appeal, the order was cancelled. Both the approvers say, the prisoner was a regular member of Manick Ghose and Bhuggoban's gangs.

The defence supports the prosecution. The prisoner denies the charge, and says the approver, Nuboye, debauched a cousin's wife of his, three or four years ago, while with the approver, Manick, he had a dispute about the price of a calf. This, if true, would prove association at all events, but it is not true, for in the lower court he stated the quarrel about the cousin's wife had occurred after the approver had been at Hooghly, i. e., after he had denounced the prisoner on the 19th January, 1854, while after dispute with Manick, the prisoner's witnesses know nothing. Two have been examined. The first says the prisoner is a man of bad character, and that a quarrel he had with the approver, Nuboye, four years ago was not about a woman. The second also declares the prisoner to be a man of notorious and well deserved ill-repute, and though he heard of his quarrel with Nuboye, does not know what it was about.

I convict the prisoner on both counts, and sentence him to fourteen years' imprisonment with labor and irons in banishment.

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Case of BRIJU *alias* BRIJI GHOSE.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton) The prisoner was arrested fourteen days after the occurrence of the dacoity, with which he is charged, which took place in 1849, and in his confession before the police named the approver No. 2, who now denounces him. We therefore consider the evidence against the prisoner perfectly trustworthy and reject his appeal.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

GOVERNMENT

versus

CHAMOO LAULBUND.

Dacca.

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Case of CHAMOO LAULBUND.

Appeal rejected.

CRIME CHARGED.—1st count, forgery in having fraudulently, and for his own benefit substituted or procured to be substituted the word "*duckin par*," south side for "*addheh*" (half) in the 9th line, and also substituted or procured to be substituted both in the numeral figure and in writing ("17") for ("15") in (Bengalee) in the 10th line of the registered deed of sale dated 5th Poos, 1255, B. S., and signed by Bheelun Beebee and Peerun Beebee, which was filed in a case of Act IV. of 1840, in which Mynuddee was petitioner; 2nd count, fraudulently issuing as true, the above document, knowing the same to have been forged.

CRIME ESTABLISHED.—Knowingly uttering a forged *kabala* for his own benefit.

Committing Officer.—Baboo Heeranund Missur, Pundit, exercising powers of a magistrate at Dacca.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 18th July, 1856.

Remarks by the officiating sessions judge.—The forgery is described in the first count of the charge.

It is proved on the part of the prosecution by witnesses Nos. 2, 3 and 4, that the prisoner accompanied his mookhtear and was present when the mookhtear filed a *kabala* on his behalf.

The *kabala* was to prove a right to possession of a piece of ground, which the prisoner was then litigating for with Mynuddee under Act IV. of 1840. The forgery consists in the alteration of one of the boundaries originally specified in the *kabala*, and the fraudulent intent by the altered boundaries containing a greater area than those originally specified. The forgery has been executed in the most clumsy way, and in the latter part of the deed the boundary remains unaltered. It is, however, in only one part of the deed that the length of a boundary is defined, and that has been altered from fifteen *nulls* into seventeen.

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The books of the register of deeds filed in the case prove that the alterations have been made subsequent to the registry.

The prisoner pleads that he gave the deed unaltered to his mooktyar, and was not aware that it has been tampered with. On reference to the petition filed by the prisoner in the Act IV. case, I find it based on the altered *kabala*. The prisoner's plea of ignorance is not proved, he is an intelligent man, who has before litigated for the land of this *kabala*. The evidence of witnesses Nos. 2 to 4 proves that he accompanied the mooktyar, and was present when the deed was filed, and may be considered a party to the filing it.

I consider it my duty to note an irregular mode of procedure on the part of the committing officer. A deed was filed by a mookhtear accompanied by his client. On the list of documents filed with it, no memorandum of any kind was made till the *serishteh* amlah refused to take such a suspicious paper without a statement of the condition in which it was tendered, the mookhtear then, and not till then, wrote a note on the list which I have referred to as accompanying the filed papers. The criminal court proceeds to subject the mookhtear to an examination, he is not examined on oath as a witness, neither is his defence taken as a suspected criminal, but he is questioned, and witnesses are summoned to support his statements, he cannot be said to have been discharged as he has never been apprehended, nor, as far as I can gather from the record, has he ever been called on to plead to the charge. I cannot see why at the beginning of this case, one man should be put on his defence, and the other merely questioned as to his share in the transaction. This mode of procedure either enables a suspected party to avoid trial altogether, or it may be a highly censurable method of obtaining admissions which may be used to the prejudice of the party making them.

The *futwa* of the law officer convicts the prisoner of uttering a forged document knowingly and for his own benefit.

In concurrence with the *futwa* I sentence the prisoner as follows:

Sentence passed by the lower court.—Imprisonment without irons for two (2) years and to pay a fine of fifty (50) rupees on or before the 18th day of August, 1856, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) In his appeal, the prisoner urges his own innocence and throws the guilt of uttering the deed on his mookhtear and the amlah; but the reasoning of the sessions judge, on the probability of the prisoner being the real culprit, is quite convincing; and, as I see no reason to interfere with the conviction and sentence, I reject this appeal.

PRESENT:
J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND RAMCOMUL CHUCKERBUTTY
versus
RAMANUND DOSS (No. 4,) GOUSHEE PRAMANICK (No. 5,) AND KHEDOO* KARIGUR (No. 6.)

Rajshahye.

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Sentence passed on the prisoners by the sessions judge confirmed, the evidence of plaintiff and plaintiff's witnesses as to the identity of the property found in the prisoner's house being most satisfactory.

CRIME CHARGED.—1st count, Nos. 4, 5 and 6, dacoity in the house of Ramcomul Chuckerbutty and carrying off property to the value o. Rs. 253-7; 2nd count, Nos. 4 and 5, knowingly receiving property acquired in the above dacoity.

CRIME ESTABLISHED.—Nos. 4 and 5, the same as crime charged

Committing Officer.—Mr. A. J. Jackson, officiating magistrate of Rajshahye.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 16th May, 1856.

Remarks by the officiating sessions judge.—This case of dacoity was tried under Act XXIV. of 1843.

The house of the prosecutor was attacked by a gang of dacoits, in number twenty or twenty-five persons. On the next day, his servant, Rohun Sirdar, presented his complaint at the thannah, distant five *coss*, and merely deposed to the dacoity having occurred, professing himself unable to say whom his master had identified, or what amount of property had been plundered. The mohurrir proceeded to the spot and next morning the darogah also arrived, and they took the prosecutor's deposition. He deposed to having recognized several of the dacoits and three of his neighbours mentioned several others.

Ultimately three of the parties named were committed for trial, the prisoner, *Ramanund* No. 4, and *Goushee* No. 5, together with another, who has been acquitted. The recognition of these prisoners by the light of several torches, and also of burning grass is consistently and satisfactorily maintained, and moreover the search of their houses resulted in the finding of articles of property belonging to the prosecutor in each instance; the articles in one case, being a gold *nuth* and a *lota*, the former being most clearly identified by the *sonar* who made it, as well as by other witnesses, and in the case of *Goushee*, the articles were a large brass *khulsi*, identified by having a small hole in its bottom, and a *jharri* also identified.

* Acquitted by the lower court.

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September 25.

Case of RAMANUND Doss and others.

Ramanund Doss' defence was on two points, in the first place, he called witnesses to prove that the property found was his own, in which he altogether failed; secondly, he sought to show that on the night of the dacoity, he had gone rounds with the chowkeedar of the village; but the evidence of his witnesses on this point, besides being inconclusive, was contradictory in the extreme.

Goushee, in defence, confined himself to the plea that the articles found were his own; but the numerous witnesses whom he called for this purpose were entirely unable to prove any thing of the kind, and, for the most part, denied all knowledge of him or his concerns.

As therefore these two prisoners were distinctly recognized at the time of the dacoity, which recognition was alleged from the earliest stages of the enquiry, as also parts of the plundered property were found in their houses by their own admission, and as their defence has entirely failed, I convict them on both counts as laid in the calendar, and sentence them as follows:—

Sentence passed by the lower court.—Imprisonment to five years with labor in irons and to pay a fine of 100 Rs. under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) There appears no reason to interfere with the orders of the sessions judge. The evidence to the recognition of the prisoners is not of the most satisfactory kind, but the proof of the property found in the house of the prisoners two days after the dacoity is good; as that property is very distinctly identified by the prosecutor and his witnesses. It was discovered in concealment; the prisoners nevertheless claimed it as their own, and summoned witnesses to that assertion, who were unable to support their statements.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GOYRAM KHAN

versus

KISHTO DOME (No. 12, APPELLANT,) KHETTOO DOME (No. 13,) SHIDESSUR DOME (No. 14,) EKA RUDDEE MULLICK (No. 15, APPELLANT,) RAM DOME (No. 16, APPELLANT.)

East Burdwan.

1856.

September 26.

Case of KISHTO DOME and others.

The appeal of two prisoners convicted of dacoity rejected, a third acquitted, the evidence against him being insufficient.

CRIME CHARGED.—Dacoity in the house of Taruckuath Mookerjea, attended with the wounding of Doorgachurn Patuck, witness, and plunder of property valued at Rs. 17-4-9.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East Burdwan, on the 23rd July, 1856.

Remarks by the officiating sessions judge.—It is clearly proved that a gang of armed dacoits attacked and broke into the house of the joint prosecutor's master, Baboo Taruckuath Mookerjea; seized and wounded Doorgachurn Patuck one of his servants; endeavoured to break open the door leading to the female apartments, and carried away some property belonging to Doorgachurn. Joint prosecutor, another servant, had in the meantime escaped; the alarm was raised, the villagers turned out; the dacoits were forced to decamp and were pursued by the villagers, and eventually prisoners Nos. 12 and 13, were cut down by a villager, witness No. 2, and by the joint prosecutor. Prisoner No. 16, and his brother, Jeebun had been recognized in the house by the light of the torches. Jeebun had formerly been a servant of Taruckuath, and his brother had been in the habit of coming to Taruckuath's house to see him.

Next morning, prisoners Nos. 12 and 13, confessed before the darogah.

The darogah obtained a clue that prisoners Nos. 14 and 15, had been engaged and wounded in the dacoity, and had them apprehended. No. 14 confessed that he had accompanied the dacoits to Taruckuath's house, and accounted for the marks on his person by saying that prisoner No. 12, had struck him for refusing to join them. No. 15, confessed that he had joined the gang before the dacoity, but stated that he had refused to accompany them, and that prisoner No. 12, had struck him in consequence and caused the injury visible over his eye. The gomashtas of the villagers, where these two prisoners reside, reported to the police, on the morning after the dacoity, that the

prisoners were absent from their homes. The reports have been produced; and the distance of those villages from the scene of dacoity, precludes the supposition of contrivance and fraud.

Prisoner No. 16, was apprehended a few days afterwards; he confessed before the darogah and asserted that prisoners Nos. 14 and 15, were engaged in the dacoity.

Before the magistrate all the prisoners repudiated their confessions and averred that they had been extorted from them.

Prisoner No. 12, in his defence at the sessions tells a very improbable story, he went to Tarucknath's house to seek employment; he was allowed to remain there for the night; the *garoo* (found when he was apprehended) was lent to him to use; when the dacoits attacked the house he was wounded and robbed; and in the confusion he was mistaken for one of the dacoits. Two witnesses have been examined on his behalf, but they do not assist him.

Prisoner No. 13, also tells a very improbable story to account for his being at Tarucknath's house; and one witness, cited by him, declares he knows nothing in his favor.

Prisoner No. 14, denies that he was among the dacoits. Before the magistrate he declared that the injury on his arm was caused in climbing a tree. The evidence of his two witnesses is not of any importance.

Prisoner No. 15, ascribes the report of his absence from his home to the enmity of his fellow-villagers. He says that a bullock gored him with his horn and caused the wound above the eye. The evidence of two witnesses who depose to having seen the goring, and of three witnesses who swear to an *alibi*, is highly improbable.

Prisoner No. 16, pleads an *alibi* and three witnesses depose to the same, but the statement is improbable.

The allegations of the prisoners, that their mofussil confessions were extorted from them, are unsupported by any evidence and are undeserving of belief.

I consider that the crime of dacoity with wounding has been satisfactorily established against all the prisoners, and I convict them of the same.

Prisoners Nos. 12 and 13, have been apprehended in former dacoities and have each been twice called upon to furnish security for their good behaviour as bad characters.

Prisoner No. 15, has also been similarly required to furnish security.

Prisoner No. 14, was apprehended in a dacoity and released.

I sentence prisoners Nos. 12 and 13, to fourteen years' imprisonment in banishment with labor in irons, and to two additional

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years in lieu of corporal punishment; prisoners Nos. 15 and 16, to fourteen years' imprisonment in banishment with labor in irons; and prisoner No. 14, to twelve years' imprisonment in banishment with labor in irons.

The courage of the villagers is highly commendable. I deem it right to authorize the payment of a reward of Rs. 50 to Tarachand Shee, witness No. 2, who cut down the dacoits, and a reward of Rs. 30 to the joint-prosecutor whose good conduct was also remarkable.

Farzand Ali, the darogah of thannah Balkishen conducted the investigation in a creditable manner.

Remarks by the Nizamut Adawlut.—(Present: Messrs B. J. Colvin and J. H. Patton.) Prisoners Nos. 12, 15 and 16, have appealed.

We see no reason to doubt the propriety of this conviction as regards prisoners Nos 12 and 16. Besides the mofussil confessions, there is good evidence against them as set forth by the sessions judge. The former would not have been seized had he been on the premises in the manner alleged by him, and the latter was recognized during the dacoity. Prisoner No. 15, was not recognized, the wounds on his person and his absence from home on the night of the dacoity, together with his previous detention as a bad character, do not afford sufficient presumption of his guilt. Although a confession is imputed to him, he is omitted as present in the confession of one of the other prisoners. We reject the appeals of Nos. 12 and 16, and acquit No. 15.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,

Officiating Judges.

GOVERNMENT AND NOBOKISHNO KOONDOO

versus

Tipperah.

ASGUR SONAR (No. 1,) NUSSURUDDIN MANJEE (No. 2,) AND MOHUMMUD KAIEM (No. 3.)

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CRIME CHARGED.—1st count, No. 1, robbery, on a river, of 30 Rs. the property of the plaintiff attended with an attempt to murder him. Nos. 2 and 3, 1st count, accomplices in the above crime and accessaries after the fact; 2nd count, Nos. 1, 2 and 3, being knowingly in possession of money obtained by the above robbery.

Prisoners convicted one as principal, and others as accessaries af-

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 3rd September, 1856.

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ter the fact, in robbery with violence.

Th conduct of the police, and recorded remarks by the committing officer noticed.

Remarks by the sessions judge.—The prosecutor stated that he had recently kept a shop in the Burisaul district, but becoming embarrassed and unable to meet his creditors, had left it secretly, with the intention of proceeding to his father-in-law's house at Dukhin Shabazpore. Meeting at Shumshabad with the prisoner, Nussuruddin (No. 2,) the manjee of a native boat, the prosecutor made an arrangement to be conveyed to his destination by water for one rupee. The boat was let on hire at the time to the prisoner, Asgur Sonar (No. 1,) who appears to have been sent for by the magistrate of Backergunge to answer a charge of plundering preferred against him. Asgur Sonar, (prisoner No. 1,) questioned the prosecutor when the latter first went on board as to his circumstances and possession of money, and the prosecutor in reply described himself as an indigent man flying from his creditors. After passing a night in the boat, and when nearing the eastern bank of the Bholah river, the prosecutor was asked by the prisoner, Nussuruddin Manjee (No 2,) for his passage-money, and in order to pay it, was compelled to expose to view a purse containing thirty-two rupees. This was no sooner seen than the prisoner, Asgur Sonar (No. 1,) harshly charged the prosecutor with having deceived him as to his want of money, struck him on the face, snatched the purse from his hand, and pushed, or threw him overboard. The prosecutor fortunately could swim, and swim well, or he would have been inevitably drowned, as the river is both broad and rapid. He managed to reach the shore and representing what had happened to him to some villagers then ploughing near the river's-edge, they followed the prisoners and succeeded in overtaking and arresting them. On the prisoner, Asgur Sonar (No. 1,) eleven rupees were found, and thirteen rupees in the possession of one of the two remaining prisoners, but which of the two, the prosecutor professed to have forgotten. The witnesses, however, supply the omission by naming the prisoner, Nussuruddin Manjee (No. 2,) as the party on whom the latter sum was found.

The circumstances attending the money said by the prosecutor and his witnesses to have been found in the prisoners', Asgur Sonar (No. 1,) and Nussuruddin Manjee's (No. 2), possession are left in great obscurity throughout this case. The joint-magistrate's abstract contains no allusion to this feature of the case and the prosecutor declares that he is ignorant what has become of the money. The prisoners were in the first instance taken by the chowkeedars who apprehended them (witnesses for the defence, Mosad No. 18, and Amiruddin Chowkeedar No. 19,) to a pharree at Gungapore in the Backergunge district, and the prosecutor says that when he mentioned the subject to the mohurrir, he was told that no money had been found on the prisoners' persons, and on referring to the papers

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sent on by the mohurrir to the darogah of Dhunnea Monea in the Bhullooah district, I observe that his report was in accordance with this answer. The mohurrir, however, stated it to be his opinion that the prosecutor had been undoubtedly robbed of rupees thirty and then knocked overboard into the river.

When the case came under the investigation and report of the darogah of thannah Dhunnea Monea, that officer, in alluding to the subject of the money said to have been found in the possession of the prisoners, Asgur Sonar (No. 1,) and Nussuruddin Manjee (No. 2), remarked that the confusion attending that branch of the case was attributable to the chowkeedars before alluded to having delayed making over the prisoners to the pharree, until two days had elapsed from their apprehension, and to remissness also on the part of the mohurrir of the pharree in not instituting immediate and close enquiries as to the prisoners having money about them. The darogah himself found Rs. 2-12 on the person of the prisoner, Mohummud Kaiem Mullah (No. 3.)

The prosecutor in the course of his statement before the sessions court throws what is, perhaps, the true light, or, at all events, a very probable one on this part of the case. He says that the two chowkeedars, Mosad (No. 18,) and Amiruddin (No. 19,) apprehended the prisoners about one o'clock on Sunday, and arrived near, but not at, the Phaurree of Gungapore, on the night of the same day. Hearing, however, that the mohurrir had gone to a place called Shampore, they followed him thither the next day. The mohurrir took no steps in the case until Tuesday, when, on searching the prisoners, no money was found. The prosecutor then says that while sleeping or lying down in the boat on Sunday night with the chowkeedars and their prisoners, he heard the chinking of money and rising up (evidently under the impression that some transfer of the rupees found on the prisoners was going on) called loudly for "*duhai*," or justice. The chowkeedars told him to be silent, that they and the prisoners were Mussulmans, where could be the difficulty of killing him, and who was he to ask about the money?

As the evidence of the witnesses for the prosecution and the confessions of the prisoners Nussuruddin Manjee (No. 2,) and Mohummud Kaiem Mullah (No. 3,) place it beyond a doubt that rupees twenty-four were found on the persons of the prisoners Asgur Sonar (No. 1,) and Nussuruddin Manjee (No. 2,) and as the confession of the prisoner Mohummud Kaiem Mullah (No. 3,) corroborates what the prosecutor states as to the chinking of money having been heard on board the boat on the night of Sunday, I think that, whether the money should ultimately prove to be the property of the prosecutor or of the prisoners, some endeavours should have been made by the committing officer to ascertain what really became of it, and whether

there is not reason to believe that it was appropriated by the chowkeedars, a probability certainly strengthened by the circumstance of there being witnesses for the defence instead of for the prosecution. The remissness of the mohurrir of Phaurree Gungapore, adverted to by the darogah of thannah Dhonnea Monea, and apparent from the prosecutor's statement was, also, in my opinion, a fit subject for enquiry. As the case at present stands, rupees twenty-four are clearly traced to the prisoners' possession when apprehended about midday on Sunday, and are thenceforth wholly lost sight of, without so far as I can perceive any trouble having been taken to discover what had become of the money. I regret the length of this digression, if such it can be termed, from the main portion of the case, but the subject called for attention and notice.

The prisoners pleaded *not guilty*.

The three first of these witnesses* were occupied in ploughing near the river-side when the prosecutor reached the shore in a dripping state, although they do not appear to have seen him actually land. He appealed to them for assistance narrating briefly the ill-treatment to which he had been subjected, and they set forth with him in pursuit of the prisoners, being guided throughout the chase by the sail of the prisoner's boat of which they managed not to lose sight. They at length overtook and seized the prisoners who, on being taxed with robbing the prosecutor, denied all knowledge of him. The prisoner Asgur Sonar (No. 1,) produced rupees eleven which, however, he said were his own, and the prisoner Nussuruddin Manjee (No. 2,) produced rupees thirteen, rupees nine of which he said had been entrusted to him to keep by the prisoner Asgur Sonar (No. 1,) the remaining rupees four being his own property. Their captors then made them over to the custody of the two chowkeedars, whose subsequent proceeding have been already narrated.

* No. 6, Pheloo Khan.
" 7, Sonaoollah.
" 8, Sheikh Luckhee.
" 9, Sheikh Bhelan.

Such evidence, as the above, might fall short of sufficiently connecting the prisoners with the violence undergone by the prosecutor, but the prisoners Nussuruddin Manjee (No. 2,) and Mohummud Kaiem Mullah (No. 3,) made confessions both at the thannah and before the magistrate, which amply supply the deficiency. They describe the prosecutor's application for a passage to Dukhin Shabazpore, and the subsequent event of the voyage precisely as he describes them himself, carefully avoiding, however, any admission of having taken a part in the violence done to the prosecutor, which they state to have been the act solely of the prisoner Asgur Sonar (No. 1). Their defence before me was to a very similar effect.

The prisoner Asgur Sonar (No. 1,) stated in his defence that he remained at Shumshabad, the village of which the

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prosecutor made his agreement for a passage home, on the understanding that the prisoners Nussuruddin Manjee (No. 2,) and Mohummud Kaiem Mullah (No. 3,) were to return thither and take him on board after landing the prosecutor at Dukhin Shabazpore. That this had been done, and it was thus that he was found in the boat when it was pursued and seized by the villagers.

The object with which the witnesses for the defence were called, was to prove that the prisoner Asgur Sonar, (No. 1,) had provided himself when leaving home with eleven rupees for the purpose of conducting his defence at Burrisaul; for it is to be observed that he denies having entrusted rupees nine to the prisoner Nussuruddin Manjee (No. 2,) as stated by the latter, and, indeed, the improbability of a traveller reserving part of his own money and confiding the rest to a stranger to keep for him, without any apparent cause for so acting, is sufficiently apparent. This object was not, in my opinion realized, the evidence being alike weak and unsatisfactory. The prisoner made no attempt to prove that he had remained at Shumshabad as he might easily have done had such been in truth the case.

The Mahomedan law officer convicted the prisoners of having robbed the prosecutor, with circumstance of violence, and pronounced them liable to *tazeer*.

My view of the case is as follows:—

The prosecutor's manner, while detailing the ill-treatment he had undergone, impressed me, so far as it would be allowable to permit mere manner to have that effect, with a strong belief of his veracity. The recollection of the great peril he had run, and his present distress at being reduced to absolute penury, affected him repeatedly to tears. Again, the evidence for the prosecution is derived from perfect strangers to either party. It may therefore be fairly received as that of witnesses who can have no possible motive for exaggerating or misstating the circumstances to which they depose. Finally, adding to the above considerations the support the prosecutor's statement derives from the confessions of prisoners Nussuruddin Manjee, (No. 2,) and Mohummud Kaiem Mullah, (No. 3.) I also am of opinion that the indictment has been sustained to the extent I am about to mention.

The joint-magistrate expresses an opinion that if it had been known that the prosecutor was in possession of money, he would probably have been murdered during the night. It may be so, but I have to deal only with what I consider to be proved, and as the act of the prisoner Asgur Sonar, (No. 1,) seems to have been quite sudden, and to have instantly followed the discovery of the prosecutor's possessing money instead of being nearly penniless, without any interval to allow of consultation with the prisoners Nussuruddin Manjee (No. 2,) and Mo-

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hummud Kaiem Mullah (No. 3,) I would convict the two latter of accessaryship after the fact to robbery attended with violence. Allowing it to be possible that they were unaware of what Asgur Sonar (No. 1,) was about to do until it was done, they were still two men to one, with every advantage of comparative youth and strength, and might easily have interfered to rescue the prosecutor when knocked into the river, instead of hoisting sail and making off as fast as they possibly could.

In the prisoner Asgur Sonar's (No. 1,) case I entertain some doubt whether the intent to murder can be regarded as legally established. There is nothing but the prosecutor's statement to show at what distance from the shore, and in what depth of water he was knocked overboard; what the chances were of his being able to reach the land; and whether, in fact, his assailant contemplated merely robbing him, or took into calculation the probability of doing so with more security by also drowning him, I would therefore limit my conviction of this prisoner to robbery attended with violence, the latter being of so serious a nature as to call, in my opinion, for a sentence of imprisonment for fourteen years with labor in irons. I think that a sentence of five years' imprisonment also with labor in irons will be a sufficient sentence on the prisoners Nussuruddin Manjee (No. 2,) and Mohummud Kaiem Mullah (No. 3,) who I convict of being accessaries after the fact.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The circumstances of this case have been correctly stated by the sessions judge.

We concur with him in opinion that the intent to murder is not legally established against the prisoner No. 1, Asgur Sonar. The boat was ten or twelve *haths* from the shore, when the prosecutor was pushed overboard; and, from his own statement as well as the confessions of the other two prisoners, the act would appear to have been sudden and unpremeditated.

The offence, however, is of a nature that requires a severe example. We convict the prisoner of robbery with violence; and sentence him as recommended by the judge, to fourteen years' imprisonment with labor in irons.

The other prisoners Nussuruddin Manjee No. 2, and Mohummud Kaiem Mullah (No. 3,) as accessaries after the fact, are sentenced to five years' imprisonment with labor in irons.

The conduct of the mohurrir and chowkeedars, on which the sessions judge has animadverted, as evincing gross and culpable neglect in the discharge of their duties, should be brought to the notice of the superintendent of police.

The joint-magistrate, who tried and committed the case to the sessions judge, permitted himself to express an opinion that "had it been known that the plaintiff carried such money about him, it is probable he would have been murdered in the night."

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This remark appears to us to have been uncalled for and unwarranted by the facts of the case, or the evidence before him. The joint-magistrate should be warned to abstain from any suppositions injurious to the prisoners he commits, which are not based upon the proved facts of the case.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges*.

GOVERNMENT AND MAHOMED HANEEF

versus

JANEEB SHEIKH.

Mymensingh.

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Case of JANEEB SHEIKH.

The prisoner was sentenced capitally for wilful murder.

CRIME CHARGED.—Wilful murder of Shooker Mahomed.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 22nd August, 1856.

Remarks by the sessions judge.—The circumstances of the case are as follows. On the 19th of Assar last, at abo[illegible] a *puhur* in the morning, the prisoner was returning home from his fields when the deceased was coming from the opposite direction, and when they were close to each other, the prisoner inflicted a severe blow on the head with a *kodallee*, which felled him on the ground, immediately afterwards the prosecutor, father of the deceased and others, came up to his assistance and conveyed him home, where after about an hour he [illegible]athed his last. The reason for this outrage is stated to have been enmity, regarding cattle trespass and on the day of the fatal occurrence, the deceased's cattle are said to have damaged the prisoner's crop.

Dr. P. F. Bellew, the civil assistant surgeon, who examined the deceased's corpse, deposes that he found the deceased's death to have been caused partly by an injury of the brain and partly from compression from the effusion of blood about it; that there was a deep wound on the forepart of the head, which fractured the skull and passed through the frontal and parietal bones, and also penetrated some distance into the substance of the brain. That the deceased was most probably stunned at first, the blood flowed out, it probably produced compression of the brain; that death could have just possibly been arrested if the deceased had been subjected in time to the operation of trepanning, which would have prevented the blood from coagulating on the brain and producing the pressure.

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Case of JANEEB SHEIKH.

The prisoner denied the charge throughout. In this court, he pleads that the deceased had been climbing up a tree from whence he fell upon his (the prisoner's) *kodallee* and cut his head, and that the witnesses then came up and denounced him as the murderer of the deceased; that he (prisoner) did not strike the blow, and that he only accosted him and desired him not to drive his cattle any more into his fields.

The law officer finds the prisoner guilty of murder, and declares him liable to punishment by *kissas*.

I concur with the law officer in this finding. It has been clearly proved on the evidence of three eye-witnesses that they saw the prisoner strike the blow upon the deceased's head, which terminated fatally about an hour afterwards. It is also in evidence that there existed enmity between the parties regarding cattle-trespass, and that on the day of the occurrence also, the deceased's cattle damaged the prisoner's crop; a sudden thought seems to have seized the prisoner of murdering the deceased, for without saying a word he felled him to the ground. I consider therefore that the crime of murder has been fully brought home to the prisoner, although under extenuating circumstances, from the fact of his having received considerable provocation in consequence of the deceased's cattle constantly trespassing in his fields, and that the ends of justice will probably be met by a sentence of imprisonment for life with labor and irons in banishment, and I accordingly beg to recommend the same.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur with the sessions judge in convicting the prisoner of wilful murder; but we cannot admit that this is a case which justifies the remission of a capital sentence. There was no immediate provocation; and it may fairly be presumed, that as the prisoner entertained hostile feelings against the deceased, he did not hesitate to avail himself of the opportunity to gratify them, when he found himself armed with a *kodallee* in his presence. Although there is no reason to suppose that the prisoner carried it with the purpose of using it upon the deceased, he still seems to have taken advantage of deceased being totally unprepared for the attack to assail him mortally; and this, without the palliation of any immediately exciting cause. We sentence the prisoner to suffer death. The sessions judge is referred to Act XIV. of 1844, which orders that transportation and not banishment shall form part of the sentence upon prisoners condemned to imprisonment for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND NUBGHUN POTHAL

versus

DURSUNNEE POTHAL.

Cuttack.

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Case of DURSUNNEE POTHAL.

Capital sentence remitted on account of the youth of the prisoner convicted of murder.

The republication of Circular Order No. 195, dated 4th February, 1818, recommended.

CRIME CHARGED.—Wilful murder of Modhoo, a boy aged five years the son of Nubghun Pothal, prosecutor, for the sake of his ornaments.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 6th August, 1856.

Remarks by the sessions judge.—The particulars of the case are as follows:

Modhoo was seen on the evening of the 17th July, near the house of defendant in his company. His father, plaintiff, went there and searched for him and next day gave notice at the thannah.

Plaintiff is the uncle of the defendant and had a quarrel with his brother, Persaddy, father of defendant. Persaddy next day gave notice that he had found the body in his own enclosure in a hollow used for keeping cow-dung, and that he had found his son the prisoner digging over the body. The feet were raised by Persaddy above the ground, and the body so kept until the arrival of the darogah. The body was swollen and could not be examined by the surgeon, but marks as of two fingers were seen on the throat. The prisoner made a free confession before the police and the magistrate that he had strangled him for the sake of his ornaments.

Before this court he denies his guilt.

The law officer finds him guilty of the charge, in which I concur. The prisoner is fifteen years of age, and doubtless must have known the enormity of the crime, but with reference to his being under age, I beg leave to forward the papers of the case to the Sudder Court with a recommendation that sentence of imprisonment for life with labor in irons be passed on the prisoner. All suspicion of complicity is removed from his father by his conduct and exclamations on finding the body. I must bring to the notice of the Court that within the last three years there have been fifteen sessions cases tried in this court of the murder or attempt to murder children for their ornaments, and perhaps the Court may think fit to urge the enactment of a law prohibiting the custom of allowing children to wear gold and silver ornaments outside their houses.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) There is no doubt of the prisoner's guilt. The only question for consideration is, what sentence should be passed upon him.

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Case of DURSUNNEE POTHAL.

With reference to the precedents of this Court in the cases of Mehtur Bewa and Ramyad Dhooneah, at pages 57 and 192, of the Nizamut Reports Part II. Vol. III. for 1853, we think that the extreme penalty of the law may be remitted on account of the prisoner's youth. We sentence him to imprisonment for life with labor in irons in the Alipore jail. With reference to the concluding remarks of the sessions judge we refer to the proclamation contained in Circular Order No. 195, dated 4th February, 1818, the effect of the republication of which throughout the province should be tried.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Offg. Judges.

GOVERNMENT

versus

BINDOO KHAN.

24-Pergunnahs.

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Case of BINDOO KHAN.

Prisoner convicted on his own confession of the wounding of Chandoo Bewa, with intent to kill her, and sentenced, under all the circumstances of the case, to 7 years' imprisonment with labor in irons.

CRIME CHARGED.—Wounding Chandoo Bewa, with intent to murder her.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of the 24-Pergunnahs, on the 15th August, 1856.

Remarks by the additional sessions judge.—The reference is made under Regulation XII. of 1829, Section 3, the law officer being of opinion that the prisoner manifested no deliberate intention to commit murder, from which I dissent.

The prisoner is charged with having wounded his mother-in-law, Chandoo Bewa, witness No. 1, with intent to murder her. The prisoner and his wife, Chandoo Bewa's daughter, are on bad terms, and she has left his house with her mother's concurrence for the house of another person; the prisoner says the witness Baboo Khan, and Baboo Khan admits she fled to some female relatives of his, who live next door to him if not in the same house. On the 2nd July last, the prisoner, it appears, went to his mother-in-law, either to find out where his wife was hidden or to remonstrate with her for countenancing her daughter in her conduct towards him. They were walking through the streets quarrelling, when suddenly the prisoner

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turned upon his mother-in-law, struck her down to the ground with his fists, and then with a knife inflicted a deep though not a dangerous gash on her right side. He then, it is stated, passed the knife across her throat (but no cut or wound was discovered in that place subsequently) and next attempted or threatened to cut his own throat. All this is clearly proved by the witnesses named in the margin.* The darogah, witness No. 7, was soon on the spot. The wounded old woman was immediately cared for and the prisoner seized, the latter admitting he had wounded his mother-in-law *intending to kill her*. Owing to the crowd and confusion, this admission which was recorded was not formally witnessed, but the darogah has sworn to its having been truly made. Subsequently the prisoner made the same ad iission to the magistrate clearly and distinctly; and although but one witness is forthcoming† to this confession in the magistrate's court, there can be no doubt of its truth and validity. Before me he has pleaded *not guilty*. I would, under the circumstances, sentence the prisoner to seven years' imprisonment without labor.

* No. 2, Madhub Kuloo.
„ 3, Mothoor Kuloo.
„ 4, Diggumber Mali.
„ 5, K..rreem Doctor.
„ 6, Dr. Strong.

† No. 9, Chundercoomar Mitter, Mookhtear.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The prisoner, in this case, has clearly acknowledged before the magistrate, that he wounded his mother-in-law Chandoo Bewa, with the intention to kill her, and that after that, in order to put an end to his own existence he wounded himself in the throat with the same knife; this intention, as far as regards his mother-in-law, we should have been unable to infer, in the absence of his confession, on the subject, either from the nature of the wound or from the mode in which it was inflicted; we convict the prisoner, in accordance with the sessions judge's opinion, on his own confession, of the wounding of Chandoo Bewa, with intent to kill her, and sentence him under all the circumstances of the case to seven years' imprisonment with labor in irons.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
JEETOO DHOBA.

Chota Nagpore.

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Case of JEETOO DHOBA.

Prisoner convicted of the wilful murder, of Runjit Haree and sentenced capitally.

CRIME CHARGED.—Wilful murder of one Runjit Haree.

Committing Officer.—Captain G. N. Oakes, senior assistant commissioner of Manbhoom.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 21st August, 1856.

Remarks by the deputy commissioner.—The Government is prosecutor in this case.

The prisoner pleads *not guilty.*

It appears in evidence* that in the forenoon of the 10th June, the prisoner had an altercation and a personal struggle with the deceased, Runjit Haree; that they were separated by the witness, Ram Nayah; that the prisoner then went into a house where he and others had put up; that the deceased went and began to cook his food in a roofless hut close by; that the prisoner twenty minutes, or half an hour afterwards, took from the house, unobserved, a sword and therewith cut down the deceased, inflicting on him four wounds, and completely severing the head from the body. Immediately after the fact, the prisoner was seen standing over the body with the sword in his hands He then ran away, but being called to, threw the sword aside and was taken into custody.

* No. 8, Oordhub Mahali.
" 9, Hurree Deyghuria.
" 10, Gour Poddar.
" 11, Ram Nayah.
" 12, Goora Baori.

On the same day, the prisoner made confession of the fact before the police officer, and the principal assistant of Manbhoom, to the effect that the deceased had assaulted him, and that prisoner had therefore taken a sword and therewith killed deceased.

No. 2, Sohun Mahto.
" 3, Gangoo Rajwar.
" 4, Manick Gurrae.
" 5, Doorgachurn Dhoba.
" 6, Sheikh Bundhoo, jail burkundaz.
" 7, Sheikh Beychoo Khan, jail burkundaz.
" 8, Oordhub Mahali.
" 9, Hurree Deyghuria.
" 10, Gour Poddar.
" 11, Ram Nayah.
" 12, Goora Baoree.

In his defence, the prisoner states that the deceased was his fellow-servant and that prisoner did not murder him. The prisoner was not clear-minded when he made confession before the police officer and

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the principal assistant commissioner, and he does not remember what he said.

The jury,* whose names are entered below, find the prisoner guilty.

It is to be observed that the confessions of the prisoner describe the quarrel and murder as continuous. But the evidence proves that between the quarrel and the murder an interval occurred. The duration of this interval is uncertain, and at most it was short. Still, it afforded that moment for reflection, which, in such a case as this, separates homicide and murder. I therefore concur in the verdict of the jury, and it is my duty to recommend that a capital sentence be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The prisoner confesses both before the police and the principal assistant of Manbhoom, to having killed the deceased in consequence of a personal quarrel with and assault committed upon him by the deceased.

The evidence of the witnesses corroborate the confession of the prisoner as to the altercation and struggle having taken place between the parties, and, as observed by the deputy commissioner, clearly shows that an interval, though probably not of long duration, still one long enough to afford room for reflection, occurred between that struggle and the infliction of this murderous blow upon the deceased, which killed him.

Under these circumstances we find the prisoner guilty of the wilful murder of Runjit Haree, and seeing no extenuating circumstances in the case, we sentence him capitally as recommended by the deputy commissioner.

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* Sreemunt Dut, mookhtear.
Goyaram Roy. ditto.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, Esqs.,
Officiating Judges.

GOVERNMENT AND RESSAUL SINGH

versus

GOPEE SINGH (No. 1,) MEER WARRIS ALLY* (No. 2,) ADHIAN SINGH* (No. 3,) AND PEERBUX DURJEE* (No. 4.)

Shahabad.

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Case of GOPEE SINGH and others.

Prisoner convicted of the culpable homicide of Puttee Singh and sentenced to seven years with labor and irons.

CRIME CHARGED.—Wilful murder of Puttee Singh.

Committing Officer.—Mr. W. J. Costley, deputy magistrate of Saseeram.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 8th August, 1856.

Remarks by the officiating sessions judge.—The circumstances connected with this case are as follows. On the 27th May, towards the close of the day Jaisree Tewarry, servant of Khojeh Hussan Jan, came to the police chowkee at Nasreegunge and gave information to the jemadar that on that afternoon Meer Warris Ally, tuhseeldar, Boodhoo Singh, Gopee Singh and several others (whose names were mentioned by him) nearly fifty in number, servants of Beebee Moula Bux, the malik of Nasreegunge, &c., had come to the Nasreegunge Bazar, for the purpose of collecting the zemindaree *rusoom*, he and Puttee Singh forbade them doing so, whereupon the above mentioned persons and others at the orders of Dewan Ramsarunlal, Meer Warris Ally, tuhseeldar, and Nawab Monad Khan assaulted Puttee Singh with "*lattees, banâhs* and *burchees*," who then and there died from the injuries received; the jemadar went and found the body lying in the middle of the bazar which is only at the distance of two *russees* from the chowkee, and sent it on to the deputy magistrate of Saseeram. In his deposition before the jemadar, Jaiseeram Tewarry stated that he could not recognize those who actually inflicted the blows from the effects of which Puttee Singh died; he mentioned the following persons as witnesses: Teeluk Singh of Ameyon half a *coss* from the bazar,

Abheelak Singh, } of Bunsdecha, ditto.
Bhunjun Singh, }

Kumul Singh of Kurma one *coss* from ditto.

On the same night Ressaul Singh, father of the deceased, came to the chowkee and said that he was too unwell to give his deposition that night, but that he would do so on the following morning, which he did, his statement being merely as to what he had heard which was similar to that of Jaisree Tewarry; but in addition to the above mentioned witnesses he named Abdool

* Acquitted by the lower court.

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Case of Gopee Singh and others.

Singh of mouzah Bunsdeeha. On the 30th of May, their evidence was taken in the mofussil. On the 13th of June, in answer to a *purwana* of the joint-magistrate at Saseeram, calling for sundry explanations and as to how it happened that none of the witnesses were inhabitants of the place where this occurrence had taken place and as to what the bazar people said about it, the darogah of Burâno replied that the Nasreegunge and Hureehurgunge people from fear of Beebee Moula Bux would not give evidence as eye-witnesses, and that therefore, plaintiff had named those of his own and neighbouring villages, but that he, the darogah, had after considerable enquiries and exertions, managed to discover seven persons of Hureehurgunge and Nasreegunge, who had given evidence. Subsequently a report dated the 20th June, was received from the darogah of Saseeram (who appears to have been sent by the joint-magistrate on a secret enquiry into the matter) who stated that from the enquiries he had made, it appeared that Puttee Singh with other piadas of Khojeh Hussan Jan went to make collections in the Nasreegunge Bazar, that Nubee Bux a piada of Beebee Moula Bux opposed their doing so, and took a "*kukree*" (a vegetable) from one of the shops on which Puttee Singh remonstrated, whereupon he was struck by Nubee Bux and Teg Ally with *lattees;* a number of people on the part of Khojeh Hussan Jan then came up and Puttee Singh was struck by two of them, viz. Abdool Singh and Hyder Ally and died.

Against this report, the latter part of which appears incomprehensible, a petition was given in on the 3rd July, by the prosecutor, stating that this darogah is a relative of Dewan Ramsarunlal one of the accused and a friend of Beebee Moula Bux. The result of the investigation of this case is most unsatisfactory, and may be ascribed in a great measure to the neglect of the police jemadar at the Nasreegunge chowkee; it is shown from the report of the Burâno darogah, dated the 13th June, and from the evidence of Mohamad Ally Burkundaz, witness No. 31, that on the day of the occurrence about noon, the prisoner, Gopee Singh, came and told the jemadar that he wanted to make collections in the bazar on the part of Beebee Moula Bux, but that Afzul, a servant of Khojeh Hussan Jan, would not allow him to do so, and that Afzul also came to the jemadar and told him that he would not permit Gopee Singh to do any thing of the kind; but notwithstanding these intimations of a probable disturbance, no steps were taken by the jemadar to prevent such, by taking care to be present in the bazar, not even was a burkundaz deputed to watch that nothing occurred. Unsatisfactory, as the enquiry has proved to be, there can be no possible doubt in my mind as to the deceased having been killed in the bazar, where his body was found, and that he met his death in some disturbance arising from the people of Khojeh

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Hussan Jan and Beebee Moula Bux, endeavouring to prevent each other making any collections from the bazar. I set aside altogether the evidence of witnesses Nos. 7, 8, 9, 10, 11 and 12, who were said to have been subsequently discovered by the darogah, and whose evidence in the mofussil was not taken before the 13th June, which is seventeen days after the occurrence, but with regard to the evidence of witnesses Nos. 1, 2, 3, 4, 5 and 6, I do not consider it should be discredited altogether, they are all residents of neighbouring villages and their being at the bazar on that day is not in the slighest degree improbable; four of them were named by Jaisree Tewarry, when he gave information at the police chowkee *shortly* after the man was killed, and there is no reason to suppose that they were not present when that took place, but as to the whole of their statements being correct I have great doubts; it is scarcely to be supposed as is made out by them that a hundred armed men should come down into the bazar and, without being opposed by any one, should attack one unfortunate person and kill him on the spot, nor is it likely that Meer Warris Ally who is an old man and has for a long time been a mookhtear in the Arrah courts, but who has lately been looking after the affairs of Beebee Moula Bux at Nasreegunge, should have headed this band in person armed with a sword and stick, but adverting to the fact of this same Gopee Singh, having on that day gone to the jemadar and announced that he was likely to be opposed in making collections in the bazar, I consider this to be corroborative proof in support of the evidence of these witnesses as to his being one of the parties who struck the deceased; the probability is that both of them were engaged in doing the same thing in the bazar, that a quarrel ensued in which the deceased was struck by Gopee Singh and others, and died from the blows received; the evidence of witness No. 17, the native doctor at Saseeram, by whom alone the body was examined shows that the skull was fractured and that there was an effusion of blood on the brain, this injury was undoubtedly the cause of his death and was probably produced by a blow from a *lobunda* which Gopee Singh is said to have used. Adheen Singh, and Peer Bux Durzee beyond forming part of the body of rioters, which I believe to be an exaggerated statement, are not shown to have done any thing.

The *futwa* of the law officer acquits all the defendants of the crime charged as well as of culpable homicide.

Agreeing in opinion with him as to the prisoners, Meer Waris Ally, Adheen Singh and Peerbux Durzee, I have acquitted them; but considering the evidence sufficient to establish the charge of culpable homicide against Gopee Singh, I recommend his being sentenced to imprisonment for seven years with labor in irons.

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Case of Gopee Singh and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We agree with the sessions judge in the conviction on the charge of culpable homicide, of the prisoner Gopee, who was distinctly recognised by the witnesses Teeluk Singh, Abeelak Singh, Bhonia Singh, and Kewut Singh, who, it is shewn, had gone to the *hât* on the day of the riot, and who were named, as having been present, by the witness Jaisree Tewaree, when he gave information at the thannah on the evening of the murder. This prisoner is also named by numerous other witnesses, whose evidence, however, is not so susceptible of credit as that of the witnesses abovenamed. Added to the latter evidence as to his recognition, there is the corroborative circumstance of his having been employed by one of the contending parties Bebee Moula Bux, as an active agent in making the collections with respect to which the riot and loss of life occurred, as shewn by his application and statement to the jemadar at noon before the riot had commenced. We also entirely agree with the sessions judge as to the discreditable conduct of the police on this occasion, both in their having adopted no attempts at prevention of the struggle which occurred and their want of activity in having failed to bring more than one out of so many offenders to punishment. We sentence the prisoner, Gopee Singh, to seven years with labor and irons as recommended.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. NAGOREE BEWAH
versus
SHEIKH NAZIR MAHOMED.

Mymensingh.

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Case of Sheikh Nazir Mahomed.

Conviction and sentence of the sessions judge confirmed.

CRIME CHARGED.—Being an accomplice in the wilful murder of Fazoo and the wounding of Arzan and Lota.

CRIME ESTABLISHED.—Severely wounded Arzan.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 3rd July, 1856.

Remarks by the sessions judge.—The prosecutrix is the widow of the deceased. She states that on the 30th Cheit last, at about a *puhur* of the night, some cows belonging to the prisoner and one Fazil (not apprehended) went into the deceased's *kalie* fields and were damaging the same; that the deceased went to

drive the cattle away and as the prisoner and his brother, Fazil, remonstrated with him, high words passed between them, and Fazil wounded the deceased with a spear first on his left leg and afterwards on the left side of the chest, which felled him to the ground and he expired immediately. That the prisoner then wounded witness No. 1, Lota, her brother-in-law, just below the left eye and on the right thigh with a *koanch* (an instrument with iron at the end used by the natives for spearing fish with) and as Arzan, brother of the deceased, repaired to the spot on hearing the deceased calling out, the prisoner struck him a blow above the wrist with that instrument. The prisoner denied the charge throughout. In this court, he states that two of his cattle having gone into the deceased's *kalie* fields, the deceased and his brothers, Arzan, Nundo, Muddoo and Lota, came up with *lattees* and spears and called him out. That he accordingly went to them and entreated them to let his cattle go, but that Arzan having ordered him to be beaten, a struggle ensued, and the deceased's brother, Nundo, threw a spear at him, but missed his aim, but hit the deceased on the chest and that they, Nundo and others, afterwards assaulted him with *lattees*. The civil assistant surgeon, who held an examination of the deceased's body and of the injuries received by Arzan, deposes that deceased's death was caused by an injury of the heart produced by some sharp pointed instrument, the wound having opened the left ventricle of the heart, through which the whole blood of the body escaped and that the deceased must have died within two or three minutes after receiving such an injury.

With regard to the injury received by Arzan, he states that he received a wound in the fore arm about three inches above the wrist joint, and that when he came to the hospital, the arm was considerably inflamed and that he found from probing it, that there was some hard substance imbedded in the arm which was found to be a piece of iron about two inches in length and that on removing it, there appeared an extensive ulcer; that after two or three days it became necessary to amputate the arm owing to mortification having commenced, and that had this not been done, it would have extended until it reached some vital organ and caused death. The law officer convicts the prisoner of wounding Arzan. I concur in this verdict.

The evidence recorded on the trial goes to shew that high words having passed between the parties regarding cattle-trespass, the prisoner's brother, Fazil, went to his house which was on one side of the field and immediately returned armed and struck the deceased on the leg and chest, which caused his immediate death, and that the prisoner, who was also present with a *koanch* in his hand, wounded Arzan on his arm. The wound that Arzan received at the hands of the prisoner, was, as described by the civil surgeon, severe, and the amputation of that

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Case of SHEIKH NAZIR MAHOMED.

arm became necessary to prevent a fatal result, and I am happy to record to the credit of Mr. Bellew, the civil assistant surgeon, that the operation was quite successful. Considering therefore from the evidence recorded that the prisoner is guilty of so much of the charge of having severely wounded Arzan, I convict him of the same, and sentence him to four (4) years' imprisonment without irons, and to pay a fine of 100 Rs. or in default to labor.

The prisoner examined several witnesses to prove the pleas advanced by him, but I have to remark that their evidence was rather against him than otherwise.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) There are no grounds for interference with the sentence passed by the sessions judge, whose orders are accordingly confirmed.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND JUHUROOLLAH SHEIKH
versus
KODOO SHEIKH.

Rungpore.

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Case of KODOO SHEIKH.

Prisoner was convicted of aggravated culpable homicide. Sentence, 14 years' imprisonment, &c.

CRIME CHARGED.—Wilful murder of Dookhah Pramanick, the father of the prosecutor.

Committing Officer.—Moulvy Abdool Jubbar, deputy magistrate of Serajgunge, Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 26th August, 1856.

Remarks by the sessions judge.—The circumstances of the case appear on the evidence to be as follows.

Early on the morning of the 12th January, Juhuroollah, prosecutor, was taking his cows out to field, followed at a short distance by his brother, Cherag Ali, witness No. 1. The path led them through the field of Kodoo, prisoner, who came out and accused the brothers of bringing the cows to destroy his crops; some words ensued, when the prisoner with a bamboo club which he had in his hand, struck Cherag a blow on his right arm, and Juhuroollah who came to his assistance was received with a blow on his head; hearing the disturbance, the father of these two, Dookhah Pramanick, deceased, came up, and remonstrated, threatening to take the case into court, when

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prisoner struck him with the same club* on the forehead, felling him to the ground. The villagers came up, seized the prisoner on the spot with the *lattee*, which they took from him, and conveyed deceased to his house, which, as well as that of the prisoner, is in the immediate neighbourhood. When somewhat recovered, the deceased stated that Kodoo had wounded him, and Kodoo admitted having done so, in consequence of a trespass committed by the prosecutor's cattle in his field. All the parties were then taken to the thannah.

Deceased was unable to make any lengthened statement there, but affirmed that he had been struck on the head with a *lattee* by the prisoner.

The prisoner confessed when questioned, his confession was at once taken down, and he was sent in on the same day. Before daybreak deceased and the prisoner arrived at Serajgunge, and the deputy magistrate, without any delay, took the confession of the prisoner. Deceased was then insensible and died in the course of the forenoon.

Brijanath Karfurma, sub-assistant surgeon.—The sub-assistant surgeon attributes his death to a fracture of the skull caused by a heavy blow, the brains exuded from the crevice.

Opinion of the law officer.—The law officer, on the ground of one of the two eye witnesses being a son of the deceased, declares the crime charged in the calendar not to be proved, but that killing of the deceased by the prisoner was established on strong presumption, and that the prisoner was therefore liable to *akoobut.* On being asked what the verdict and appropriate punishment would have been, had not Cheraj Ali, the witness referred to, been a son of the deceased, he replied, that the crime charged would have then been considered established, and the prisoner liable to *kissas.*

Opinion of the sessions judge.—The evidence appears to me to be perfectly satisfactory, but I see no ground to suppose premeditation. The first blows appear to have been inflicted in the heat of passion, and no interval of any moment during which the prisoner would have had time to cool, appears to have elapsed, between the infliction of the above blows on the sons of the deceased, and the arrival of the deceased to take their part. The weapon used is certainly a sufficiently deadly weapon, but there is this to be said in the prisoner's favor that he had before used it, upon the sons of the deceased without any fatal effect, and may not have intended to use it with any more deadly purpose against the deceased, but the deceased was an old man, upwards of sixty, and perhaps less capable of bearing up against

* A bamboo five feet long and about seven inches in circumference at the thickest end and weighing 160 *tolahs.*

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such a blow than a younger man. There was but one blow given, whatever may have been the original provocation, the prisoner would not appear to have had any interval for reflection, and there appears to have been no sufficient reason why he should have been desirous to take the life of the father instead of that of the two sons between whom and himself the original quarrel arose.

Recommendation of the above.—I would convict the prisoner therefore of culpable homicide, and recommend that he be sentence' to imprisonment for fourteen years with labor in irons.

I observe that the confession recorded before the deputy magistrate does not bear the certificate required by Circular Order of the Nizamut Adawlut, No. 54, dated 16th July, 1830, and that the deputy magistrate has not adhered to the rules laid down in the circular of the superintendent of police, No. 6, of 1853.

The prisoner arrived during the night, his confession was taken down immediately, the burkundaz who brought him in being seated, while it was so written, either in the *verandah* where it was recorded, or immediately below it, and the attesting witnesses being a burkundaz of the guard and a peadah of the court. The attention of the deputy magistrate will be called through the joint-magistrate, to the irregularities above alluded to.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) This is a very aggravated case of culpable homicide. We have indeed had some doubts whether the facts disclosed on the trial do not call for the conviction of the prisoner on the higher charge of wilful murder. There does not appear, however, to have been any previous quarrel, the prisoner was heated, when the deceased came up, by the altercation with the sons of the latter, was enraged at the threat which the unfortunate man held out to him, and struck him with the *lattee* which he held in his hand in the passion of the moment and without, so far as appears, any intention of taking his life. We consider therefore that, notwithstanding the age of the deceased, which should have protected him against the violence of the prisoner, the great weight of the weapon used, and the absence of all legitimate ground of provocation, the prisoner's crime only amounts to culpable homicide and that a sufficient example will be afforded by a sentence of fourteen years' imprisonment in banishment with labor in irons.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND BISSUMBHUR MOOKERJEA
versus
GOPAUL DHAS, (No. 9,) UKUR MONDUL, (No. 10,) AND LUKUN MONDUL, (No. 11.)

Jessore.

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Case of GOPAL DHAS and others.

Conviction and sentence of the sessions judge confirmed, the confessions both in the mofussil and before the magistrate being complete and duly attested and the evidence to the occurrence of the dacoity being clear and distinct.

CRIME CHARGED.—Dacoity in the house of the prosecutor Bissumbhur Mookerjea, attended with wounding of him and plunder of property valued at Rs. 154-4, on the night of the 12th May, 1856, corresponding with the 13th of Bysack, 1263, B. S.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 15th July, 1856.

Remarks by the officiating sessions judge.—The complainant states that a gang of persons with four lighted *mussals* broke into his house, on the night of the 31st Bysack, corresponding with 12th May last, seized hold of him by the hair of his head, held him down and inflicted on his head a severe blow with a stick, that then they burst open his boxes and plundered whatever they could lay hands on. He did not recognise any of the ruffians and at the time had not the slightest suspicion against any parties.

The witnesses to the fact, as they are termed in the comparative statement, only saw the occurrence, and after it was over, went to the complainant's house to hear his story. Among them, witness No. 1, is the village chowkeedar, but he apparently did not make any energetic efforts either to arrest any of the dacoits in the act, or to pursue after them in their retreat. "Alone," he says, "what could I do." The arrest of the prisoners was brought about through some information given to the darogah by a police burkundaz, witness No. 23. He was deputed to try and get some clue as to the perpetrators of this dacoity, and passing close to the house of the prisoner No. 9, Gopal Dhas, he heard a Mussulman, Jumir Jolar, warning him to be careful to disclose nothing. These words arrested his attention and he went towards the parties, when they immediately ran away. On the prisoner No. 9, Gopal Dhas, being arrested, he made a full confession, mentioning the name of his associates, among them those of the prisoners Nos. 10 and 11, who, on being

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arrested, likewise confessed. These prisoners on being forwarded to the magistrate again reiterated their confessions.

In this court the prisoners all plead *not guilty*, and in defence urge that the confessions taken by the police were extorted by them, being subjected to ill-treatment. The confessions before the magistrate the prisoners ignore, and plead they must have been in such an excited state of mind from the previous ill-treatment that they knew not what they were saying. The witnesses cited by the prisoners in their defence know nothing personally of any il'-treatment being shown by the police, but they aver the prisoners are men of good character, earning their livelihood in an honest manner and never suspected of committing crime. The witnesses to the confessions before the police distinctly depose that the prisoners were not subjected to any ill-treatment or persuasion when giving their confessions, which were quite voluntary.

In like manner the witnesses to the confessions of the prisoners, given before the magistrate, assert that the prisoners freely and of their own accord, without any police near them to intimidate them, gave their confessions, which were taken down in writing, word for word, as they were given.

The trial was conducted under the provisions of Section 3, Act XXIV. 1843, and on their confessions, given voluntary and without any intimidation or persuasion, and the circumstantial evidence on the record that a dacoity in all respects similar to that in which the prisoners admit they were participators was committed, I convict the prisoners No. 9, Gopal Dhas, No. 10, Ukur Mondul and No. 11, Lukun Mondul of the crime with which they are charged.

In consideration of its being the first offence of which the prisoners are convicted, I sentence each of them to imprisonment with hard labor in irons for seven years in banishment.

The wound on the complainant's head is declared by witness No. 8, the sub-assistant surgeon, to be now quite healed up. It was, however, he states, occasioned by a severe blow with a *lattee* or some such blunt instrument.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We see no reason to interfere in the sentence passed by the sessions judge. The confessions in the mofussil and before the magistrate, on the part of all the prisoners, are complete and duly attested. In their appeal they urge that there was no proof of the occurrence of the dacoity; but this is far from being the case; the wounding of the prosecutor and the evidence of the chowkeedar and other inhabitants of the village fully prove it.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND DINNOBUNDOO MAHTO
versus
RAM MAHTO (No. 1, NON-APPELLANT,) KALEEDYE (No. 2,) AND BAWULCHUNDER PAL (No. 3.)

Moorsheda-bad.

1856.

September 26.

Case of RAM MAHTO.

Appeal rejected.

CRIME CHARGED.—(Nos. 1 and 2,) 1st count, dacoity in the house of the prosecutor Dinnobundoo Mahto, in which property to the value of Rs. 434-5-6, was plundered; 2nd count, knowingly receiving and possessing and pawning some property acquired by the said dacoity. (No. 3,) knowingly receiving and possessing some of the plundered property acquired by the said dacoity.

CRIME ESTABLISHED.—(Nos. 1 and 2,) being accomplices in dacoity and knowingly receiving and disposing of property acquired by dacoity; (No. 3,) receiving and possessing property acquired by dacoity knowing that it had been so obtained.

Committing Officer.—Mr. C. E. Chapman, joint-magistrate of Moorshedabad.

Tried before Mr. R. P. Harrison, officiating sessions judge of Moorshedabad, on the 16th July, 1856.

Remarks by the sessions judge.—The prisoners plead *not guilty.*

This dacoity which was unattended by any aggravating circumstances was committed on the night of the 4th May, 1856, in the village of Imadpore in the jurisdiction of thannah Hurreehurparah. The prosecutor ran away when the dacoits, fifteen or sixteen in number, entered his house and did not return till after they had left, when he found his boxes broken open and that property to the value of Rs. 434-5-6, had been carried off. Information was given at the Hurreehurparah thannah, the darogah of which arrived on the following morning.

A list of the plundered property was given to him by the prosecutor, to the correctness of which he (the prosecutor) has deposed before this court. The enquiries of the Hurreehurparah police were unsuccessful.

On the 7th of May, or three days after the occurrence of the dacoity, the darogah of thannah Nowada (witness No. 6,) to whom intimation of the dacoity with a list of the property had been sent by the Hurreehurparah darogah, in consequence of information he had received from Sridhur Mokhapadya (witness No. 28,) apprehended the prisoners Nos. 1 and 2. The former, on being questioned, at once admitted his knowledge of the da-

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coity, gave the names of the parties by whom it was committed, adding that it had been contemplated since the month of Magh. He further stated that the property had not been divided and would be found in Narainpore in the house of Baboo Khan, and that he had heard that a portion of it had been taken to a wholesale store in the village (Narainpore,) which he would point out. The darogah proceeded the same night towards Narainpore and on the morning of the 8th, placed a watch over the store or shop of Nubeen Baboo which was pointed out by the prisoner No. 1. He then searched the house of Baboo Khan and others, but without finding any property. On his expressing his intention to search the shop of Nubeen Baboo, vehement objections were raised by the gomastah Bawulchunder Pal, the prisoner No. 3, who declared that there was no property acquired by dacoity in the shop, and that without his master's orders he would not allow the search to be made. The darogah insisted and the premises were searched and articles Nos. 1, 2, 3, 4, 5, 6 and 8, were found concealed in different places. The prisoner at first stated that he had purchased articles, Nos. 1 and 2, from the prisoner No. 1, and that the other articles belonged to his employer, but on his reply being taken in writing, he stated that all the property had been pledged to him by the prisoners Nos. 1 and 2. The darogah finding that articles Nos. 1 to 5, corresponded with articles enumerated in the plaintiff's list, and that they as well as Nos. 6 and 8, were declared by prisoner No. 1, to be part of the plundered property, took the articles with the prisoner No. 3, (in custody) to the thannah.

The darogah, witness No. 6, who appears to be a very intelligent officer, has given his evidence in a clear straightforward manner. His statement is corroborated by the evidence of witnesses Nos. 2,* 14 and 29, and proves the reluctance of the prisoner No. 3, to have his shop searched, the finding of the property concealed in different places and the contradictory statements made by the prisoner regarding the manner in which it came into his possession. The witnesses Nos. 10, 11, 12, 13, and 15, who are entered in the calendar as witnesses to the finding of the property have not supported the darogah's evidence as to the manner in which it was produced. Nos. 10, 11 and 12, state that they were not inside during the search and do not know how the property was found. These witnesses are all either ryots of or otherwise connected with Nubeen Baboo (a zemindar and merchant in the Nuddea district) the employer of the prisoner, and from the manner in which their evidence has been given, I am inclined to believe, that they have not told the

* This witness stated that the prisoner from the first stated that the property had been pawned to him.

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whole truth. Witnesses Nos. 6, 7, 8 and 9, prove that the confessions of the prisoners Nos. 1 and 2, in the mofussil were voluntarily made. The former confessed to privity only, the latter that he had been actually engaged in the dacoity implicating No. 1, as a principal. They have denied before the foujdary and before this court, citing for their defence, witnesses to character only, who have said but little in their favor.

The prisoner No. 3, has employed two vakeels to defend him. He admits having received the property from Nos. 1 and 2, but states, that it was pawned to him openly and without any knowledge on his part, that it had been dishonestly obtained. The witnesses (Nos. 13, 33, 34, 35 and 36,) to the defence depose that the property was pledged to No. 3, by prisoners Nos. 1 and 2, and that he advanced Rs. 11, upon it, the transaction being openly conducted. In support of his defence, the prisoner has filed his *khatta* book, in which the loan to Rammahata prisoner No. 1, is entered. This book embraces transactions from Bysack to the 6th Joisto only, and may very easily have been prepared to meet the occasion, or that the property was received by the prisoner No. 3 from the other prisoners I believe, but that he received it honestly and in ignorance that it had been otherwise than honestly acquired, I discredit. His unwillingness to allow the shop to be searched, the fact of the property, which by his own account had only been received the day before the search, being found concealed in three different places, the contradictory statements made by the prisoner and the position and circumstances of the persons from whom he obtained it, are all inconsistent with innocence, and induce the belief that the property was received by him for his own benefit and with a guilty knowledge of how it had been acquired.

The articles Nos. 1 to 6 and 8, have been identified as belonging to the prosecutor, Nos. 6 and 8 were not enumerated in the list of the plundered property but the prosecutor has explained the omission by stating that he was not aware at the time that they were missing. The evidence adduced leaves no doubt that they actually belong to the prosecutor. I consider the guilt of the prisoners Nos. 1 and 2 established by their own voluntary confessions in the mofussil and by the strong circumstantial evidence by which those confessions are corroborated. I convict them of being accomplices in dacoity and of knowingly receiving and disposing of property acquired by dacoity, and sentence them to seven years' imprisonment and two years additional in lieu of stripes with labor in irons.

I convict the prisoner No. 3, upon violent presumption, of receiving and possessing property acquired by dacoity, knowing that it had been so obtained, and sentence him to seven years' imprisonment with labor in irons.

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I further sentence the prisoners jointly and severally to pay a fine of Rs. 411-15-3, under Act XVI. of 1850, that being the value of the property plundered from the house of the prosecutor which has not been recovered.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) We see no reason to interfere with the decision of the sessions judge in this case The confession of No. 1, goes further than privity, as he admits having accompanied the dacoits. The confessions of both Nos. 1 and 2, are corroborated by the circumstantial evidence, and the guilty knowledge of No. 3, is clear from the facts detailed by the sessions judge.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
MADHUB CHUNG (No. 3,) AND RAMCOOMAR CHUNG (No. 4.)

Hooghly.

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Case of MADHUB CHUNG and RAMCOOMAR CHUNG.

Prisoners convicted on their own confessions corroborated by the contemporaneous record of the magistrate's courts as regards the occurrence of three dacoities, with having belonged to a gang of dacoits and sentenced to transportation beyond sea for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. R. P. Harrison, officiating sessions judge of Hooghly, on the 16th August, 1856.

Remarks by the officiating sessions judge.—The prisoners are charged with having belonged to a gang of dacoits.

They confessed before the commissioner for the suppression of dacoity and the deputy magistrate employed under him, Madhub Chung No. 3, to having been concerned in eighteen dacoities and Ramcoomar Chung, No. 4, to having been concerned in thirteen dacoities. Both prisoners have pleaded *guilty* before this court and have acknowledged that their confessions are true and were voluntarily made.

The witnesses named in the margin* prove that the confessions were voluntary.

* No. 8, Gopal Misser.
" 9, Joynarain Chuckerbutty.

The occurrence of three of the dacoities to which both prisoners have confessed is proved by the evidence of the witnesses Nos. 1 to 7, namely, that in Chunderhatty Rughoonathpore by witnesses No. 1, Grish Kulloo and No. 2, Bhugwan Kulloo, that in Maleempore, by witnesses No. 3, Gobind Manna and No. 4, Ramchand Bagdy, and in Shahpore Gazeerdorga

by witnesses No. 5, Haneef Meah, No. 6, Kalloo Malla, and No. 7, Hamid Meah and by the records of those cases.

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Case of MADHUB CHUNG and RAMCOOMAR CHUNG.

I would convict the prisoners Madhub Chung and Ramcoomar Chung, upon their own confessions, corroborated by the evidence and by the records and proceedings of the several cases referred to in the calendar, and would recommend that they be sentenced to transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs J. S. Torrens and C. B. Trevor.) The prisoners' confessions are proved to have been voluntary; and are corroborated by the cotemporaneous records of the magistrate's courts as regards the occurrence of three of the dacoities in which the prisoners acknowledge that they took a part.

Under these circumstances, we consider the confessions good and valid as against the confessing parties themselves, and we convict them of having belonged to a gang of dacoits, and sentence them, as recommended by the sessions judge, to transportation beyond sea for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GUNGADHUR RUTH

versus

SUDDYE BEHARAH.

Cuttack.

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Case of SUDDYE BEHARAH.

The Court convicted the prisoner of culpable homicide but enhanced the sentence proposed by the sessions judge on account of the aggravated character of the offence.

CRIME CHARGED.—1st count, wilful murder of Sumbhoo Ruth, brother of Gungadhur Ruth, the co-prosecutor; 2nd count, culpable homicide; 3rd count, wounding of Gungadhur Ruth, the co-prosecutor on the 13th July, 1856.

Committing Officer.—Mr. A. S. Annand, magistrate of Cuttack.

Tried before Mr J. Ward, sessions judge of Cuttack, on the 8th August, 1856.

Remarks by the sessions judge.—The particulars of the case are as follows.

The cows of defendant were eating the plaintiff's corn, on which plaintiff abused defendant, who stabbed him in the chest with a sharp pointed knife with which he was cutting grass. The plaintiff and his brother, the deceased Sumbhoo Ruth, advanced and both followed defendant into his house where the wife of defendant says they dragged him by the hair and flogged him with cocoanut fibres, on which defendant stabbed Sumbhoo below the breast, piercing the liver, and then stabbed him in the thigh nearly severing the femoral artery, which last was the im-

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Case of SUDDYE BEHARAH.

mediate cause of death though the other wound might have caused it. The weapon was the same knife which defendant kept in his hand from the first. Doctor Pringle examined the body.

The law officer finds the prisoner guilty of murder, but liable to punishment by *acoobut*. The two brothers in anger followed the prisoner into his own house and unless for the purpose of beating him, they would not have been likely to have done so, and I believe the evidence of his wife as to the flogging, &c. The pr vocation then I hold to have been great. He did not, it is true, use his deadly weapon in defence of his life but, holding the knife, he retreated to his own house and the contest was thus forced on him, when in sudden anger he killed Sumbhoo Ruth; I therefore must class the crime as culpable homicide and not murder, for there was no previous enmity. I beg leave to forward the papers of the case to the Sudder Court, recommending tha. sentence of seven years' imprisonment with labor in irons be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We agree with the sessions judge, that this is not a case of wilful murder, but of culpable homicide. There is no doubt, that the deceased died at the hand of the prisoner; and the circumstance of his having first wounded one brother and then the other, at some little interval of time, disproves his statement that the wounds were accidental in his attempt to release himself. There is no reason, however, to suppose that he purposely cut the deceased on the femoral artery. Considering that the prisoner was the original offender and did not hesitate to use the knife, which he had in his hand in a most reckless way, we are of opinion that the sentence proposed is too lenient. We sentence him therefore to fourteen years' imprisonment with labor in irons.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT

versus

KOYLA.

Patna.

1856.

September 27.

Case of KOYLA.

Appeal rejected.

CRIME CHARGED.—Affray attended with severe wounding of Hurlall Singh and Goordial Singh.

CRIME ESTABLISHED.—Affray attended with severe wounding of Hurlall.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 5th August, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty.*

It appears from the evidence on one side that about March last, Mehgoo, prisoner No. 7, purchased some buffaloes at a public distraint auction sale. That twice these animals escaped from his homestead and ran off towards their former quarters. On the third, the present occasion, they had again run off and had been tied up by Koyla, prisoner No. 9, at his house which is between that of Mehgoo and the former owner of the buffaloes who is a near relation of Koyla's. Hurlall, prisoner No. 6, volunteered, or was sent by Mehgoo, to search for them, and taking with him, Deelchand, witness No. 4, came in the course of his search to Hurreenugger, where Koyla lives and there found the buffaloes tied up under a tree before Koyla's house. When he asked Koyla why he tied up the buffaloes, Koyla attacked him with a *gurrasee* or pole-axe and wounded him severely in the arm. Hurlall is stated to have been unarmed. It was said next day that Koyla had wounded himself to get up a case against Mehgoo. These facts are deposed to by witnesses Nos. 1, 2, 3 and 4.

On the other side it was sworn that there was enmity between one Ramlall (not apprehended) and Koyla, because Ramlall had ousted Koyla from the field the latter cultivated. That Ramlall, Mehgoo, Goordial and Buldeo, (also not before the court) had come to Hurreenugger with a large body of men and had set upon Koyla and wounded him and otherwise maltreated him and robbed him of his property. Mehgoo and Ramlall are stated to have wounded him with swords, both striking him and inflicting two wounds on his back and shoulder. That they then all run away but were overheard saying to each other "that as Koyla has been badly wounded,

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we must wound one of our own men;" these facts are deposed to by witnesses Nos. 5, 6, 7 and 8.

The civil surgeon, witness No. 9, swears to Koyla having only one wound "a wound," on back and shoulder, it was severe but not dangerous. The wound of Hurlall was dangerous as well as severe.

The defence of all the parties corresponds with the evidence given on part of each. Hurlall says he went to search for Mehgoo's buffaloes, and finding them at Koyla's house, wished to take them away when Koyla wounded him with a *gurrasee.* Mehgoo says, he had lost his buffaloes and got Hurlall to go and look for them, Hurlall came back wounded, and told him as above; Goordyal says he had nothing to do with the matter beyond being a brother of Mehgoo, and giving notice at the police station of Hurlall being wounded. Koyla says he was attacked near his own house by the party described by the evidence on his side (witnesses Nos. 5, 6, 7 and 8,) was wounded with swords by Mehgoo and Ramlall, and beaten by Goordyal and others.

The evidence of the witnesses called for the defence with regard to Hurlall amounts to nothing; with regard to Mehgoo to an *alibi;* with regard to Goordyal to the same; with regard to Koyla to his having previously borne a good character.

The jury bring in a verdict of guilty against Koyla, prisoner No. 9, but acquit Hurlall, Mehgoo and Goordyal.

I concur in this verdict. The evidence of witnesses Nos. 1, 2, 3 and 4, though in some measure doubtful and conflicting, is sufficient to bring home to Koyla the fact of his having tied up Mehgoo's buffaloes, and resisted their release on account of their lawful owners. In coming to this conclusion, I have taken into consideration the thannah reports and the counter-evidence on part of Koyla's witnesses Nos. 5, 6, 7 and 8, where Hurlall's name is carefully avoided and an absurd and utterly incredible story of the attack on Koyla being caused by enmity of Ramlall is put forward, evidently with a view to leading attention from the much more obvious story of the stray cattle. That there was an affray and culpability on both sides I have no doubt, nor is it for a moment credible that the severe wound on Koyla's back was self-inflicted, but there is no evidence which, even with the large licence allowable in native testimony, and especially in counter-charge cases like the present, can convict any of the three parties, prisoners Nos. 6, 7 and 8, now before the court. Hurlall, No. 6, is not even alluded to by any of Koyla's witnesses as being present at the time. The wound on Koyla's back described by the civil surgeon is sworn to have been two wounds inflicted respectively by Mehgoo and another; on examination of the scars left by Koyla's wound there were apparently two cuts, but as the civil surgeon alluded only to one

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the other may have been of older date, a re-examination of the medical witnesses before the close of the prosecution might have elicited this fact, but it was not considered of sufficient importance, the other glaring discrepancies in the evidence rendering it immaterial to the issue of the case; one witness says that Mehgoo, Goordyal, Ramlall, and Buldeo, were by themselves, unattended. Others say, there were twenty or twenty-five men with them though taking no part in the affray. No probable or any way credible cause of the attack on Koyla, as described by his witnesses (those for the prosecution taking his part,) is put forward and a most improbable and incredible story is told by them of Mehgoo and the others, when making off agreeing among themselves to wound one of their own men, and further it is utterly incredible that in order to get up a counter-charge against Koyla they should wound so as to maim for life, the man Hurlall who had nothing whatever (according to Koyla's witnesses) to do with the affray.

Under the above circumstances, I convict Koyla prisoner No. 7, of affray and severe wounding of Hurlall with a *gurrasee* or other edged weapon, and with reference to the illegal act of forcibly detaining another man's cattle, in which he was engaged at the time, and the dangerous and lasting effects of the wound inflicted on Hurlall, sentence him to five years' imprisonment with labor in irons. The affray was probably unpremeditated, there is no evidence at least to the contrary.

The prisoners Hurlall, Mehgoo and Goordyal, are acquitted and ordered to be immediately released.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) This is clearly a case in which the sessions judge had to decide between very conflicting evidence. I, however, concur entirely in the view taken by him, it is indeed the only one by which all the facts can be reconciled. I reject this appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND MUNGUR MUHTON,

versus

BOODHUN DOME, (No. 17,) EATBAREE KULAN, (No. 18,) EATBAREE KHORD, (No. 19,) TUCOREE, (No. 20,) NUNKOO, (No. 21,) MANICK, (No. 22,) EMAMOODIN, (No. 23,) SONMUN, (No. 24,) LUTCHMUN (No. 25,) BALOO ALIAS BULOOA, (No. 26.)

Bhaugulpore.

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Case of BOODHUN and others.

Appeal rejected.

CRIME CHARGED.—1st count, dacoity and plunder of property valued at Rs. 30-11-3, in the house of Pirtum Rawoot; 2nd count, receiving and possessing plundered property knowing at the time of receiving it, that it had been obtained by dacoity and plunder.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. A. E. Russell, magistrate of Bhaugulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 26th June, 1856.

Remarks by the officiating sessions judge.—This case was tried under Act XXIV. of 1843, on the 25th and 26th June, 1856.

The prisoners pleaded *not guilty.* Mungur Muhton, a connection of one Pirtum Rawoot, was the prosecutor in this case, but finding the latter was in attendance, I directed his deposition to be taken. It appears that in *Magh* last, a dacoity was committed in his house, when property valued at Rs. 18 was plundered, the police, on this occasion, failed to discover the perpetrators. The magistrate directed the attendance of Pirtum Rawoot at his court, and before he left his home for Bhaugulpore, he placed his house and property in charge of Mungur Muhton, and Narayn Roy. During his absence, another dacoity took place. Mungur and Narayn depose that in the month of Chyte, on Tuesday, date unknown, about ten dacoits entered the house, who first bound them and threw them on the ground threatening that if they moved, they would be killed, they then took a quantity of straw from off the roof of the house and set fire to it which enabled them to see where the property was placed, and they then rifled the house, decamping with property valued Rs. 30-11-3. consisting of grain, implements of husbandry and various other articles as detailed in the list filed at the thannah. Prisoner No. 17, was distinctly recognized, when it was agreed to follow him to his village. Mungur and Narayn, after they had released

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themselves, went to the prisoner's house taking with them three other persons, who joined them *en route*, and to whom they mentioned the circumstances of the case and how they had identified the prisoner No. 17, when committing the dacoity. Some time after their arrival at No. 17's house, which they *surrounded*, they observed *him* and *two others* Nos. 18 and 19, (son and son-in-law of No. 17,) returning with three Banghies of property which were placed in prisoner's house. No. 17, in seeing the men who were watching inquired of them the cause of their coming to his village, they deceived him by stating that they had come in search of a stray bullock; he directed them to go away which they promised to do, when it was light. One of the party remained at the prisoner's house to prevent the property from being removed while the others went to a police *phandie* which was half a *koss* from prosecutor's house. The burkundaz arrived and immediately apprehended No. 17 and on searching his house a quantity of the plundred property was *found;* he then *confessed* implicating prisoners Nos. 18 and 19, who reside with him and all the others, who were also apprehended and their houses searched and further property discovered in them. Some of the prisoners pointing out bags and baskets of grain, &c., which they had concealed in the jungle, acknowledging that they had not time to divide the spoil and urging that their destitute condition was the cause of their committing the crime. From the athletic and healthy appearance of the majority of the prisoners, I consider this excuse a mere subterfuge to excite the commiseration of this court, and it is not improbable that the prisoners belong to a gang and were the perpetrators of the dacoity in prosecutor's house, in Magh last. All the prisoners confessed before the magistrate to having *stolen* the prosecutor's property, but deny having committed dacoity, their confessions before the police and magistrate are attested by witnesses Nos. 9, 10, 11 and 12, as being voluntary.

Witnesses Nos. 1, 2, 3, 4, 5, 6, 7 and 13, depose to the apprehension of prisoners, and finding of property in their houses and jungle, while witnesses Nos. 1, 2, 6 and 13, identify it as belonging to prosecutor.

The majority of the prisoners in their defence allege that they were maltreated by the police, which caused them to confess, some affirming that they did not confess before the magistrate, while others aver that the prosecutor tutored them to criminate themselves. Such frivolous pleas, without being substantiated, are inadmissible; and considering the guilt of the prisoners established, by the evidence adduced for the prosecution (although there is some slight discrepancy apparent) the finding of the prosecutor's property in their houses, and its identification and their voluntary confession before the police and magistrate, I sentence them accordingly.

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The magistrate's attention has been drawn to the incorrectness of the names of two prisoners inscribed on their confessions, which had to be altered in this court and also to the insecure state of property in the neighbourhood where the prosecutor resides, with the view to increase the strength of the police if necessary as although there is a police station a short distance from his house, yet it is presumptive that the present establishment is insufficient to compete with the audacity of the dacoits and thieves in that locality. The chowkeedar, to exonerate himself from blame, declared that he had two *tolahs* to watch quarter of a *coss* apart and that during his absence from prosecutor's *tolah* (which comprises three houses) the dacoity occurred.

Sentence of the lower court.—No. 17 to twelve (12) years' imprisonment and Nos. 18 to 26, each to ten (10) years' imprisonment, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoners, in their appeal, assert that though they gave the confessions, they are not true, as they were intimidated by the police into making them. They have, however, failed to account for the property claimed by the prosecutor which they are represented to have given up as stolen, though they declared the same to be their own, and might have produced proof of the fact at the sessions.

I see no reason to interfere with the conviction of, and sentence passed upon, these men and reject the appeal.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND KALOO SHEIKH

versus

MADAREE SHEIKH (No. 1,) BHIKOO* BISWAS (No. 2,) ADOO KANA (No. 3,) ANUND BISWAS (No. 4.) ASHAREE* SHEIKH (No. 5,) MUDDOO SHEIKH (No. 6,) GOOROOCHURN SINGH (No. 7,) AND BUSSARUT KHAN (No. 8.)

Rajshahye.

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Case of MADAREE SHEIKH and others.

Sentences passed upon prisoners Nos. 1, 3, 6, 7 and 8, confirmed the evidence on the record fully brings home to these the crime of which they have been found guilty.

A prisoner sentenced to only one year's imprisonment with labor and irons should have his labor made commutable to a fine.

CRIME CHARGED.—1st count, Nos. 1, 3, 4, 6, 7 and 8, dacoity in the house of Unnomonee Dossea, in which property to the value of Rs. 1262-1, was plundered, and in which the witnesses Nos. 1, 2, 3 and 4, were severely assaulted and wounded; 2nd count, No. 1, knowingly receiving and possessing portions of the aforesaid plundered property; 3rd count, Nos. 3, 4, 6, 7 and 8, aiding and abetting in the aforesaid dacoity.

CRIME ESTABLISHED.—Nos. 1 and 6, dacoity committed in the house of Unnomonee Dossea; No 3, being an accessary both before and after the fact to the above dacoity; No. 4, privity to the aforesaid dacoity; No. 7, aiding and abetting in dacoity; No. 8, dacoity in the house of Unnomonee Dossea and wounding Kaloo Shah and others.

Committing Officer.—Mr. R. Alexander, joint-magistrate of Pubna.

Tried before M.. L. Jackson, officiating sessions judge of Rajshahye, on the 10th July, 1856.

Remarks by the officiating sessions judge.—This was a dacoity committed in the house of one Unnomonee, the widow of a Sahoo (apparently a substantial Mohajun.) It appeared that several members of the same family occupied parts of the same premises, though not in community with the prosecutrix.

The robbery was committed by a party of men who (principally from the Nuddea district) had taken a boat belonging to one of the party, and under the pretence of trade, having a cargo of chillies, moved up and down the river seeking an opportunity for such acts as that under trial.

An attack was made at midnight upon the house of prosecutrix, who appears by her confidential servant, Kaloo Sheikh; the party did not exceed eleven or twelve persons.

Disturbed by the noise, Kaloo Sheikh, a relative of Unnomonee, residing as above stated, in a separate part of the premises,

* Acquitted by the lower court.

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got up and roused another of the family, Kasinath. Kaloo is a powerful and determined looking man about forty years of age. The two with their *lattees* seeing two of the dacoits carrying torches, made an attack on them, and the villagers being at the same time aroused, the dacoits endeavoured to get away with the plunder in silver and gold articles, the Sahoos, however, hung upon their rear and contrived to strike down the hindmost man, the prisoner Madaree, who being between fifty and sixty years of age (he says sixty) was probably not equally alert or able for resistance with the others. He was secured after a struggle in which he inflicted a wound on Kasinath Sahoo with a *dao*, which he held in his hand; part of the gang endeavoured to rescue him, and blows were exchanged, and the leader of them was clearly marked both by his general appearance as a *dark* and able-bodied man, and by his features, but also by a blow on the forehead which he received from Kaloo Shah's *lattee*, he also wounded Kaloo, severely on the left side of the face with a *tulwar*, and two more of the neighbours were likewise wounded, one with a *tulwar*, the other with a *lattee;* the prisoner Madaree having been secured, and several small articles, two pawn boxes and some silver ornaments being found upon him tied in his cloth, confessed before the darogah, disclosing the whole circumstances, and the prisoners were all apprehended in consequence, and all confessed with more or less distinctness their complicity in the offence, except the leader Bussarut Khan No. 8, who was taken last of all, and denied the charge, but (besides being named by all the other prisoners as the head of the gang) he was plainly identified by the witnesses Kaloo and Kassinath, the scar on his forehead being then fresh; it is perfectly visible now.

Having got clear off with their boat, however, and eluded the police for two or three weeks, no part of the property was discovered, except that taken upon Madaree.

Being brought before the magistrate, it is said that all confessed again, but there is no satisfactory proof of the confessions made by two of them Bhikoo and Asharee (Nos. 2 and 5,) who, as there was no other evidence against them, have been acquitted.

In this court all have pleaded *not guilty*, and the case against them respectively stands thus:

No. 1, Madaree taken *flagrante delicto* with part of the plunder upon him, having wounded one of the witnesses, confession before the darogah and the magistrate, has been once before convicted of riot and assault on a police officer, and sentenced to one year's imprisonment.

No. 3, Adoo Kana, proved by his confession before the darogah to have been accessary before and after the fact, such confession being confirmed to a great extent by his confession

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before the magistrate, and by the proof, in evidence, that the prisoner had charge of the boat in which the party had been embarked, and in pursuance of their scheme, sold to a trader a portion of the chillies, receiving only a portion of the price, and not returning to claim the remainder.

No. 4, Anundo Biswas, the owner of the boat, confessed before the darogah that he had accompanied the party who committed the dacoity, and stated before the magistrate, that he had witnessed the commission thereof. This prisoner is a mere lad, nineteen years of age.

No. 6, Modhoo Sheikh, stated to the darogah that he had been one of the party on board the boat, that while he was asleep, the others went ashore leaving only him and Adoo and Bhikoo, that after a while, Bussarut returned, saying they had got into trouble and advising him to be off; before the magistrate he said still less, declaring that he had heard of the dacoity for the first time from the darogah. Unfortunately, however, for this prisoner, the witnesses, Kaloo and Kassinath, in their first depositions before the darogah had stated that one of the dacoits, carrying torches, had one of his arms burned, which they had distinctly seen by the torch-light; on Modhoo's apprehension the upper part of his left arm was seen to be quite black from a burn, and he was at once identified by the witnesses. This identification coupled with his own partial admission, appears to me to bring the crime clearly home to the prisoner, especially if his statement be taken in connexion with those of the rest, his assertion that he was left on the boat, being directly contradicted by Adoo Kana and Bhikoo, who seem to have been the only two left behind.

No. 7, Gooroocaurn Singh. The confession of this prisoner before the darogah, repeated in substance before the joint-magistrate, proves him distinctly guilty, as aiding and abetting in the dacoity, if not more.

No. 8, Bussarut Khan. This prisoner has not confessed; but his identification is quite satisfactory, he attempts to set up an *alibi* which entirely fails, and his attempt to account for the scar on his forehead is equally futile and unsuccessful. He appears to have been once before apprehended on a charge of dacoity, but acquitted at the sessions. The whole circumstances of the case point him out as the leader of the gang dangerous from his spirit and activity.

All the confessions relied upon in the above remarks, have been satisfactorily proved in this court, and not one of the prisoners has been able to establish a satisfactory defence, the witnesses in behalf of Anundo Biswas, proving too much in saying that he was at his own house during the whole month of Chyte, never leaving it for an hour, a circumstance altogether improbable, as well as at variance with his confessions.

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There has not been as much care and intelligence used in the preparation of this case by the joint-magistrate, as I should have wished to see.

The trial was held under Act XXIV of 1843.

Sentence passed by the lower court.—Nos. 1 and 6, to seven years, No. 3, to three years, No. 4, to one year, No. 7, to five years and No. 8, to fourteen years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) In this case, prisoners Nos. 1, 3, 6, 7 and 8, have appealed against the sentence of the sessions judge.

On a perusal of the record, we find that the crimes for which they have been sentenced have been fully substantiated by the evidence of the witnesses to the same. We see no reason therefore for interfering with the sentence passed upon the prisoners by the sessions judge.

Prisoner No. 4, has not appealed. We observe from the abstract, however, that he has been found guilty of privity to the dacoity only, and has been sentenced to one year's imprisonment with labor and irons. This is incorrect; the sessions judge should have made the labor commutable to a fine. We, in accordance with Section 2, of Act XIX. of 1848, certify this fact to the judge, who will pass a fresh sentence according to law upon the prisoner, and will amend the record in accordance therewith.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT AND SHEODIAL MAHTOE

versus

SHEODIAL (No. 1,) SOONOO (No. 2,) BALCHAND (No. 3,) FUKEERA (No. 4,) AND MEGUN (No. 5.)

Patna.

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Case of SHEODIAL DOSAUD and others.

Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the zemindaree cutcherry of Sheodial Mahtoe, attended with personal violence and theft of property valued at Co.'s Rs. 83-5; Count 2, Nos. 1, 2 and 3, knowingly possessing property obtained in the aforesaid dacoity.

CRIME ESTABLISHED.—Dacoity in the zemindaree cutcherry of Sheodial Mahtoe attended with personal violence and theft of property valued at Co.'s Rs. 83-5.

Committing Officer.—Mr. A. V. Palmer, officiating joint-magistrate of Barh.

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Case of SHEODIAL DOSAUD and others.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 18th August, 1856.

Remarks by the sessions judge.—Tried with a jury* as per margin. The prisoners plead *not guilty*.

* Mahomed Tussuddook Hossein.
Goopeenath
Suyud Furhut Hossein.

The prosecutor, Sheodial farms the village of Bekoochuck, his own home is in mouzah Barhoo, three *coss* from Bekoochuck. He was sleeping in the zemindaree cutcherry of Bekoochuck, when a number of men with torches and *lattees* attacked and robbed the house of 65 Rs., in cash and other property valued at Rs. 18-5, Oodwont, witness No. 2, was sleeping in the cutcherry with him, witnesses Nos. 4, 5 and 6, were sleeping in the Augun, they were all roused and threatened and some of them beaten. The thieves, on entrance, ordered the money which prosecutor had received for grain to be given up to them, he told them to take what they could find, on which they turned him and Oodwont out and found the money which was buried in the ground under a *choola*. It further appears on evidence that grain merchants, witnesses Nos. 15 and 16, had been negotiating the purchase of grain for two days previously and were still on the spot, and that they had paid money to the prosecutor, Sheodial, on the day before the robbery; witnesses Nos. 2, 3, 6 and 15, were all more or less wounded, the scars being still plainly visible. Oodwont only, witness No. 2. was thought badly enough wounded to be sent to hospital, and there is a report by the native doctor of Barh, regarding his wounds, dated the 16th of July, corresponding with the scars shewn in court. None of the wounds were dangerous or very severe. Nundoo, witness No. 15, a boy of ten years old not comprehending the responsibilities of an oath was not subjected to one; a brass ring was wrenched from his ear by one of the robbers as the torn lobe plainly testifies. Witnesses Nos. 8, 9, 10 and 11, depose to the stolen articles found in the houses of prisoners Nos. 1, 2, and 3, which prosecutor and witnesses Nos. 11, 12 and 13, identify as his own. The value of the property thus recovered is only Rs. 2-4. But the bulk of the theft was of cash made away with probably long before the officers of justice could track the thieves to their houses and hiding-places.

The defence of the prisoners is various. Sheodial says the property found in his house is his own, and that of his witnesses one, Balchund, has been made a prisoner and another has been frightened by the darogah.

Soonoo denies the crime and attributes the accusation to enmity on part of prosecutor, stating that they have had frequent quarrels about cattle-trespass and that prosecutor once before charged him with highway robbery of 135 Rs.

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Balchand also pleads enmity from the same causes as those named by Soonoo.

Fukeera says, he knew nothing of the matter till he was apprehended.

Megun says the same.

They call no witnesses to prove their statements, and there is no sort of confidence to be placed in their stories of enmity on part of the prosecutor. Fukeera's assertion that the boy Nundoo named one man in the foujdary, and another here as tearing his ear is false. In the foujdary he named no one, here he named Fukeera.

The jury bring in a verdict of guilty against all the prisoners in which I concur

The case is fully proved against all the prisoners. They are near neighbours of the prosecutor and his witnesses, whose evidence is clear and convincing; the more so, as they are men of different classes all on the spot at the time and seemingly respectable and disinterested; the scars of their wounds speak for themselves. There is not the least doubt of the money transaction or of the fact of each being in the house at the time of the robbery. The identification of the prisoners, the point which, in cases of this description, is apt to be suspicious is here clear, reasonably explained and consistently persevered in. The property found in the houses of prisoners Nos. 1, 2 and 3, is not so little open to suspicion, the articles found being of so very common a description. The witnesses, however, swear to their identity and the 1st count of the indictment is too clearly proved to render the secondary one of any importance. I convict the prisoners Sheodial, Soonoo, Balchund, Fukeera and Megun, of dacoity attended with personal violence and sentence them to fourteen years' imprisonment with labor in irons in banishment. The property found in the houses of prisoners Nos. 1, 2 and 3, and sworn to by prosecutor as his own, to be made over to him.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The proof in this case depends entirely on the credibility of the eye-witnesses, who not only speak to the fact of the dacoity, but identify the prisoners as the individuals who committed it. That some of these witnesses were present, there can be no doubt, as the wounds on their persons testify to the fact, and the consistency of their statements throughout, gives a favorable impression of their evidence.

The sessions judge has placed all reliance on the prosecution, and as far as the cross-examination of the witnesses leads to any conclusion I should say he was fully justified in doing so. The prisoners impute the charge to enmity, but have cited no witnesses in their defence.

I can see no reason to interfere and therefore reject the appeal.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

DINNONATH CHUCKERBUTTY
versus
HIRALALL SIRCAR.

Nuddea.

1856.

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Case of HIRALALL SIRCAR.

The Court, on the evidence of one witness present at the occurrence and that of other witnesses who saw the prisoner throwing away the axe, found the prisoner guilty of wounding with intent to kill and sentenced him to ten years' imprisonment with labor and irons.

CRIME CHARGED.—Wounding with intent to murder.

Committing Officer.—Baboo Issurchunder Ghosaul, deputy magistrate of Santipore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Nuddea, on the 2nd September, 1856.

Remarks by the additional sessions judge.—The prosecutor and the prisoner were rival candidates for the favors of a mistress, witness No. 1. On the 15th July last, the prosecutor was at Purnoh Ghosamee's house, when the prisoner entered and immediately attacked prosecutor for being there. Prosecutor made no reply, when the prisoner aimed a blow at him with a hatchet, he had in his hand and cut him with it behind the wrist down to the bone.* Purnoh rushed towards the prisoner to prevent further mischief, screaming out all the time for assistance. Witnesses Nos. 2, 3 and 10, ran to the spot, saw prosecutor standing bleeding from the arm, and next saw the prisoner throw the hatchet in his hand, at the wounded man with an exclamation that he would take his life. Witness, No. 1, also deposes to prisoner having threatened in her presence the day before to take prosecutor's life, from jealousy at his visits to her (witness). After discharging the hatchet at prosecutor, prisoner attempted to escape, but witness No. 2, arrested his flight. He struck and got away from her, however, without trouble. Prisoner was given up by his brother-in-law, Hiralall Dutt, on the following day the matter having been reported at the thannah the very night of the occurrence by Pooran Ghose chowkeedar. I think it probable that, as prisoner maintains, the hatchet belongs to the woman, Purnoh, but I cannot see what difference this can make in his offence. The defence is that all concerned were drinking in Purnoh's house. that prisoner was ill-treated because he had, for some months previously, neglected to visit the house, and that in a drunken scuffle, prosecutor fell down and wounded himself. There has been no evidence produced to support this unlikely story.

* Witness. No. 9.

The law officer acquits as there was only one witness (No. 1,) who saw the wound inflicted. I, on the contrary, think the offence charged completely brought home to the prisoner, and

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beg to recommend he be sentenced to ten years' imprisonment with hard labor, under Regulation XII. 1829, for wounding with intent to murder.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We agree with the sessions judge. The evidence of witness No. 1, who was present at the occurrence from the commencement as well as of the other witnesses, who came up directly after and saw prisoner throwing away the axe, clearly establishes his guilt. We sentence him to ten years' imprisonment with labor and irons, as recommended by the sessions judge.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
GOLUCKCHUNDER LALLA.

Chittagong.

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Case of GOLUCKCHUNDER LALLA.

Sentence of imprisonment for five years with labor and irons passed against the prisoner confirmed, the evidence clearly showing that the receipts were uttered with a view to defraud Government and were never signed by the parties whose names are alleged to be upon them.

CRIME CHARGED.—Forgery, viz., in having fraudulently forged or caused to be forged by the defendant No. 13, the following five receipts purporting to be receipts granted by Asmut Ali, Ahmed Ali, Suddar Ali, Akbur Ali, Torabooddeen, Latooreeah, son of Mahomed Rejah and Latooreeah, son of Bocha, witnesses present and absent, Asgur Ali, Suffer Ali, Ashruff and Oseeoollah for Co.'s. Rs. 33, dated the 5th November, 1855, corresponding with the 20th Kartick, 1217, M. S., and a receipt for Co.'s Rs. 33, dated the 9th November, 1855, corresponding with the 24th Kartick, 1217, M. S., granted by Latooreeah, Futteh Ali, Hosun, Hydur Ali and Bengeeah, witnesses present and deceased, Dost Mahomed Shumshere and absent Ashruff Ali, Jaffer Ali, Jan Mahomed and Omeid Ali. As also one dated the 16th November, 1855, corresponding with the 1st Agrun, 1217, M. S., for Co.'s Rs. 36, granted by Manaeeah, Kanto Dome, Natyeah, Hydur Ali, Akbur Ali, the son of Mulookchand, Suffer Ali, Munsur Ali, Hydur Ali 2d. Munsur Ali, son of Kaloo and Loodheeram, witnesses present, and deceased, Akbur Ali and absent Ramkanto, and another receipt dated the 17th November, 1855, corresponding with the 2nd Agrun, 1217, M. S., for Co.'s Rs. 51, granted by Goluck, Moraree Joogee, Perateeah, Ramlochun, Sreeram, Becharam, Baker Ali, witnesses present and deceased Bocharam, Ramdhun, Ramhurry and absent Podar, Ramsoondur, Bullaram, Burkut, Rohomut and Shoojah; and another receipt, dated the 22nd November, 1855,

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corresponding with the 7th Agrun, 1217, M. S., for Co.'s Rs. 48, granted by Jeetram, Ramshurrun, Magun Dass, Bullaram, Komul Dass, Ram Dass and Moralee, witnesses present, and deceased, Toyheram and Kooloochundro and absent Dattaram, Ramhurry, Dyaram, Dookheeram, Ramhurry, son of Kalichurn, Dattaram, son of Hurreeram, and Bushunt. And with having fraudulently affixed or caused to be affixed by the defendants Nos. 12, and 13, to the aforesaid receipt the names of the abovementioned individuals; 2nd count, the defendant No. 11, having uttered the said forged five receipts well knowing the same to be forgeries and fabricated receipts in having presented them to Lieut. S. C. Jervis, Executive Engineer, 2nd Division, D. and A. Road, as the receipts granted by the several abovementioned parties for the money advanced to them; 3rd count, No. 11, being at the time in the employ of Lieut. S. C. Jervis, Executive Engineer, 2nd Division, D. and A. Road. Embezzlement, in having drawn from the treasury of that officer the sum of Co.'s Rs. 200, for the purpose of paying certain coolies, which amount he never paid to the coolies, but appropriated to his own purposes; 4th count, No. 11, being at the time in the employ of Lieut. S C. Jervis, Executive Engineer, 2nd Division, D. and A. Road, theft of Co.'s Rs. 200, drawn by him from the treasury of that officer, specially for the purpose of paying the coolies he had to collect, which amount he never paid to the coolies, but expended for his own purposes.

CRIME ESTABLISHED.—Fraudulently issuing and publishing as true, fabricated deeds, knowing the same to be false and fabricated.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 27th May, 1856.

Remarks by the additional sessions judge.—That certain false receipts were fabricated by the superscription of the names of persons therein represented as acknowledging the receipt of money, who never did receive such money or grant such receipts was proved by the testimony of thirty-five out of the sixty-seven persons, by whom the false receipts purported to have been signed, and by satisfactory evidence of the deaths of two of the remaining thirty-two having preceded the dates of the false receipts. The issue and publication of these false and fabricated receipts by the prisoner was established by the evidence of the executive engineer, before whom the prisoner laid them *saying that he had advanced (money) to the men whose names were therein contained and that they were the original receipts given by those men.* That the prisoner knew the receipts in question to be false and fabricated was presumed from his having made to the executive engineer th› representations abovementioned

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Case of GOLUCH-CHUNDER LALLA.

and from the proof that such representations were not consistent with truth.

The fraudulence of the publication consisted in attempting thereby to obtain credit with the executive engineer, for the distribution of money entrusted to him for a particular purpose in a manner in which he had not really expended it. A jury, consisting of three pleaders practising in this court and before the Sudder Ameen, one of whom was a Christian, another a Mahomedar and the third a Hindoo, found the prisoner guilty. As he was an educated man, employed in a post of some importance and responsibility, and had betrayed the trust reposed on him, it was thought fit to visit his offence with condign punishment.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five years.

Rema. ks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The prisoner, in his appeal, urges that he has been found guilty before the sessions judge and the assessors who tried the case, on what he conceives to be a charge wrongly brought and likewise on insufficient evidence. As to the illegality of the charge, he represents that, as he had procured and retained the receipts, with the forgery of which he is charged, for his own satisfaction and security merely; the executive officer to whom they were produced was not concerned in the matter. As to the insufficiency of the evidence, he represents that there was only the single testimony of Lieut. Jervis, the executive officer against him; and that this was not sufficient. These objections are not to the point. The charge on which he has been found guilty is of having affixed names of parties to receipts, who never gave such receipts, and uttered the same with a view to defraud Government; and whether he had been ordered by the executive officer to take these receipts or not, does not affect the question as to the forgery. As to the other objection, we observe that there is not only the direct evidence of Lieut. Jervis, against the prisoner, but that of the coolies, who were alleged to have signed the receipts; and that the prisoner had affixed names of others who are shewn to have been dead at the date. We see no reason to interfere in the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND THAKOORDASS CHATTERJEA

versus

ISSUR SAKAROO (No. 1,) AND SREEKISTO BISWAS (No. (2.

Moorshedabad.

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Case of ISSUR SAKAROO and another.

The prisoners were sentenced to transportation for life on conviction of dacoity attended with severe wounding.

CRIME CHARGED.—1st count, dacoity with wounding and violence in the house of the prosecutor in which dacoity Juggessur Singh was wounded and property to the value of Rs. 3,449-10 was plundered and a straw-built hut and property to the value of about Rs. 1,000 were destroyed by fire; 2nd count, knowingly receiving and retaining in possession a portion of the property acquired by the said dacoity.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 13th September, 1856.

Remarks by the officiating sessions judge.—A gang of dacoits attacked, on the night of the 8th July, 1856, the pucka two-storied house of the prosecutor on the village of Nundunpore, thannah Raneetalaub, and getting on to the upper-story they severely wounded the prosecutor's servant; witness No. 26, Juggessur Singh, carried off property in cash, silk and other goods valued at Rs. 3,449 and burnt a *chupper* that was over the staircase on the out-side of the house.

Early the next morning the prisoners, No. 1, Issur Sakaroo, and No. 2, Sreekisto Biswas, were stopped by witnesses* Khoodee Sheikh burkundaz and Nussub Khan burkundaz, as they could not give a satisfactory account of the articles, cash and silk goods, in two bundles they were carrying through the village of Dobhara Pote in the Shahanuggur thannah. The burkundazes took the prisoners to the Shahanuggur darogah and they confessed before him that they had been committing a dacoity and obtained that property as their share, but were unable to state in whose house, and in what village this dacoity had occurred. They stated that they had passed the previous day in the house of the prisoner, No. 3, Gooroochurn, and on his being apprehended he also confessed and said he had put his share of stolen property in the house of prisoner No. 4, Shamchand Rukhit, and on that prisoner's house being searched he pointed out two pieces of silk goods as part of what he had given to the prisoner. Out of 10 articles, all silk goods, found

* No. 1, Khoodee Sheikh.
No. 2, Nussub Khan.

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in the prisoner No. 4, Shamchand's house, 6 articles were claimed by the prosecutor as his property.

The prisoners No. 1, Issur Sakaroo and No. 2, Sreekisto Biswas confessed also before the magistrate, and those confessions as well as their mofussil ones were clearly proved.

Witnesses to Foujdary confessions.
No. 16, Kistolall Chand.
" 17, Tincauri Singh.
" 18, Luchmun Shaha.

Witnesses to Mofussil confessions.
No. 12, Chundernath Day.
" 14, Hurrish Chunder Mookerjea, darogah.
" 15, Ramgutty Roy, mohurrir.

They both pleaded not guilty before this court, and No. 1, Issur entered into a statement which was the counterpart of his confessions, except that he said he did not commit the dacoity but remained in the *maidan*.

I therefore convict those two prisoners of having committed a dacoity in the prosecutor's house, in which the prosecutor's servant witness No. 26, Juggessur Singh was severely wounded, and a thatch over the prosecutor's staircase and property valued at Rs. 1,000 were burnt, and property valued at Rs. 3,449 was plundered, and as the wounds on Juggessur were most severe, and he had not yet fully recovered from their effects, and the dacoity a most serious one, I would recommend a sentence of transportation for life beyond sea as an adequate punishment for both the prisoners No. 1, Issur Sakaroo and No. 2, Sreekisto Biswas.

The evidence against the prisoner No. 4, Shamchand Rukhit, was the being named in the confessions of the prisoners Nos. 1 and 2, and certain property found in his house being claimed by the prosecutor; but the prosecutor did not claim the two articles pointed out by prisoner No. 3, Gooroochurn Kurmokar, as part of the stolen property that he had received, and the six articles he did claim were merely *dhootees*, &c. of silk such as may be found in nearly every house in this district, and had no distinguishing mark whatever, and moreover were not entered in the list of stolen property first given to the police by the prosecutor, and as the articles were also claimed by the prisoner No. 4, and his business is the selling of such silk goods, I do not consider that the property is proved to be the prosecutor's, and therefore the prisoner No. 4, Shamchand Rukhit is entitled to his release and is accordingly acquitted, and the property found in his house will be restored to him. I consider he was committed on sufficient grounds.

The prisoner No. 3, Gooroochurn Kurmokar, being too ill in hospital to allow of his being present during the trial, the case is postponed as regards him.

I have ordered a reward of 10 Rs. being presented to each of the two burkundazes, witness No. 1 and witness No. 2, for

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their meritorious conduct in apprehending the prisoners Nos. 1 and 2, and have addressed the officiating magistrate regarding certain neglect in this case on the part of the darogah of thannah Shahanuggur.

This case was tried under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton) We concur with the officiating sessions judge in convicting the prisoners Nos. 1 and 2, on their own confessions, and from finding in their possession portions of the property acquired by the dacoity, proved to belong to prosecutor, of dacoity with severe wounding, and sentence them as proposed to transportation for life under Clause 3, Section 3, Regulation XVII. of 1817.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,

Officiating Judges.

GOVERNMENT AND NUNNOO MUNDLE

versus

CHUTTERGAON LALL (No. 1,) AND BESHARUT ALLIE, (No. 2.)

Purneah.

1856. September 27. Case of CHUTTERGOON LALL and another.

CRIME CHARGED.—1st count, illegal confinement; 2nd count, extortion.

Committing Officer.—Sheikh Zaynoodeen Hossein, deputy magistrate of Mudhehpoorah.

Tried before Mr. George Loch, sessions judge of Purneah, on the 31st July, 1856.

Prisoners found guilty by the Court of extortion and illegal confining of parties and sentenced one to two years' imprisonment with labor commuted to a fine of 50 Rs. payable within ten days and the other to eighteen months with labor commu-

Remarks by the sessions judge.—The defendants in this case are the acting mohurrir and a burkundaz of thannah Nathpore. On the 28th February, 1856, Narayan and Mukhun made a complaint at the Naka of Dhurm Kurnea, where Besharut Ally was stationed, against Nunnoo Mundle accusing him of having made away with Sham, son of Narayan. The burkundaz forwarded the statement to the thannah and the acting mohurrir, Chuttergaon Lall came to make enquiries. He arrived at the village on Wednesday night and took up his residence in Mohun Mundle's premises. Nunnoo was not to be found on the Thursday, but returned to his village during the day, and in the morning presented himself to the mohurrir, who ordered Besharut Ally to put him into the "*koteghur*," a cow house in Mohun Mundle's premises used temporarily for that purpose. After a short time Besharut Ally brought a pair of stocks in which he inserted one of Nunnoo's legs, and he was

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table to a fine of 20 Rs. payable in ten days.

kept in this confinement during the remainder of Friday, all Saturday and part of Sunday, when he was released after paying Rupees 44 to the mohurrir and burkundaz, and giving up a bond for Rupees 18-4, due by Mukhun to him.

The witnesses noted in the margin* proved the statement made by the prosecutor. Narayan Doss states that on the third day, Sunday, the mohurrir sent for him and told him that he would release Nunnoo if he gave him something, and said he wanted Rs. 44. After communicating with Nunnoo, the witness went to Hunnoomany, brother of the prosecutor, and got Rs. 24 from him, and Rs. 20 from Hookum Chund, and accompanied by Hookum Chund returned to Mohun Mundle's house. He then called Mohun Mundle, and the three witnesses went to the mohurrir's lodging, and as requested by the mohurrir paid him Rs. 24, and Rs. 20 to the burkundaz, Besharut Ally. The mohurrir then said, You must now go and settle with Mukhun. The witnesses went to Mukhun, who, with the other parties, were assembled in Jeetun's premises, and Narayan asked him, what he wanted to come to a settlement, and on his demanding the return of the bond for Rs. 18-4, Narayan sent Kumul Mundle and got the bond from Hunoomany Doss, and gave it back to Mukhun. The party then went back to Mohun Mundle's house, and Mukhun made a statement to the mohurrir, that he did not wish to carry on the enquiry further at that time; that he had not yet searched in the Morung, and perhaps Sham would be found there, and if he got no tidings of him in eight days, he would give information at the thannah. Nunnoo was then released on the security of Narayan and the police left the village. This evidence is corroborated by the depositions of Hookum Chund and Mohun Mundle. The latter mentions how the stocks were made by a carpenter called by the burkundaz, and that they were taken away by one of the chowkeedars, who accompanied the police on their departure, and states that during the three days, Nunnoo was in confinement, he was on one day allowed to get cooked meal at Mohun's house, Mohun's son being in the mean time placed as his substitute in the "*koteghur*."

* Narayan Doss.
Hookum Chund.
Mohun Mundle.

The defendants deny the charge. Chuttergaon Lall pleads that the case has been got up by his enemies, and in his petitions to the deputy magistrate of Mudhapoorah distinctly charges the darogah of Nathpore with getting up the case. The cause of quarrel between these two functionaries, as stated by the defendant, is too trifling to render it likely that any ill will should exist between them, particularly after the mohurrir had left the thannah. Besharut Ally attributes the charge being brought against him to his refusing to suppress the charge

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made by Mukhun and Narayan Gwallah against Nunnoo for having made away with Sham, and brings certain witnesses to prove that they saw Nunnoo, Mohun, and Narayan Doss at the Naka, and they heard them request the burkundaz not to forward the information, but he refused. He also brings certain witnesses as to character. The witnesses called by the defendant, Chuttergaon Lall, either say nothing in his defence, or state that they saw Nunnoo in the stocks.

The charges are clearly proved by the evidence of the witnesses, nor do I think that there are any grounds for questioning the truth of the complaint. The mohurrir's time of service had expired, and he was giving over charge of the thannah records to the incumbent, when Besharut Ally's report arrived, he put off giving over charge and immediately started for Mouza Gree Prittee: and probably thinking that it was his last opportunity of "making hay while the sun shone," and that there was nothing in the charge brought against Nunnoo, a little chance of detection or of complaint being made as he was about to leave the thannah, he determined to turn the opportunity to his own profit. Objection has been brought against the complaint, that several days elapsed before it was made. The money was taken on 2nd March and the complaint made on the 12th idem. The prosecutor had to go eighteen *coss* to Mudhapoora, and at the time of his arrival, the court was closed during the fair at Singhasur Than, and no needless delay appears to have occurred. The defendant, mohurrir, has not attempted to prove the darogah's participation in getting up the case, and failing his instigation, there is no assignable reason why the prosecutor should have got up a false charge against the police officers. Had he not been ill-treated and the money taken from him, there were no grounds for complaint against them. The mohurrir's report regarding the disappearance of Sham is not unfavorable to him, and the mere act of enquiring into a criminal charge, if properly conducted, is not likely to have induced the prosecutor to complain against the police whatever ill will it might have raised in his mind against the false accuser.

The law officer considers the first charge proved against the defendants. He does not consider the second charge proved. He remarks in his *futwa* on the wording of the second charge, and certainly the omission of the word "*rishwut*" in the vernacular charge would have been preferable. The purport of the charge is, however, sufficiently clear, and as the trial had already been delayed a fortnight, owing to the non-receipt of the calendar and *nutthy;* and a delay of ten days more was likely to occur had the calendar been returned to the deputy magistrate at Mudhapoora for correction, to the annoyance and waste of time

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of the witnesses, I thought it advisable to proceed with the trial.

I recommend that the defendants be each sentenced to six months' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor). The prisoners have been found guilty by the sessions judge on both of the counts, as laid in the calendar; by the Moulvie of the first count only, viz.: illegal confinement. From the *futwa* of the law officer, it would appear that he is equally satisfied as to the guilt of the prisoners with the sessions judge; but has felt himself unable to give a *futwa* for extortion owing to a mistranslation of the word in the Hindustanee version of the calendar. We agree with the sessions judge that there is proof both of extortion, and illegal confinement on part of the police mohurrir and the burkundaz, who detained the complainant in stocks for three days, and only released him on the payment of 44 Rs. For such an offence as this we think the punishment recommended by the sessions judge to be quite inadequate; and we accordingly sentence the mohurrir, prisoner No. 1, to two years' imprisonment with labor commutable by fine of 50 Rs. payable in ten days; and the burkundaz, prisoner No. 2, to one year and six months with labor commutable by a fine of 20 Rupees also payable in ten days. We observe that the sessions judge's report on the trial, and recommendation of sentence, show the crimes, of which he convicted the prisoners only by reference to the calendar. He should state in his reports very precisely, when making a reference of the kind, the specific offence or offences of which he finds prisoners guilty.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MOIDI SHEIKH MANJI, &c.,

versus

OKUR PAROI, (No. 18,) RAMDHUN PAROI, (No. 19,) BUNGSHI PAROI, (No. 20,) ANUNDO PAROI, (No. 21,) CHEEROO ALIAS HURNARAIN PAROI,* (No. 22,) LALLCHAND PAROI,* (No. 23,) PORUSH PAROI,* (No. 24,) SUDANUND PAROI, (No. 25,) GUGGUN PAROI,* (No. 26,) ISSUR PAROI,* (No. 27,) DHURMO PAROI,* (No. 28,) RUGHOONATH KUR*, (No. 29,) AND BUNGSHI DEB,† (No. 30.)

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The prisoners were acquitted, there being no legal proof of their guilt.

CRIME CHARGED.—1st count, Nos. 18 to 21 and 25, committing a dacoity on the boat of the prosecutor Moidi Manji, on the night of the 23rd of December, 1855, corresponding with the 9th of Poos, 1262, B. S., and plundering therefrom property valued at Co.'s Rs. 739-13-6, belonging to Kishtokanto Shaha, and Rs. 1,265-14-6, to Kalikanto Bunick, and about Rs. 1,004-0-1, to Rammohun Budra, and Rs. 187-0-2, belonging to Goorudoss Sein, and Rs. 490-0-10, to Bishumber Roy, total Co.'s Rs. 3,687-0-9, and with carrying off the boat and things belonging to Moidi Manji, valued at Rs. 31-6-10, and the murder of one of the boatmen Kushal Sheikh; 2nd count, knowingly having had in their possession or having received portions of the property acquired by the above dacoity.

CRIME ESTABLISHED.—1st count, Nos. 18 to 20, river-dacoity and plunder of property valued at Rs. 3,718-15-10; 2nd count, Nos. 21 and 25, knowingly having had in their possession property acquired in the said dacoity.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 10th July, 1856.

Remarks by the officiating sessions judge.—The complainant is the manji of a country cargo-boat, and was employed to convey from Calcutta to the village of Bhangah in zillah Furreedpore, a cargo consisting of cotton thread, iron and several articles of grocery. There were three (3) mullahs in the boat with the manji, but not a *churreendar*, the manji himself being entrusted with the property of which he had by him a copy of the invoice. After proceeding three or four days'

* Acquitted by the lower court.
† Died before trial.

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sail from Calcutta, they approached the village of Delotee, thannah Noabad, in the district of Jessore, when on the night of the 9th Poos, corresponding with that of the 23rd December last, a fast pulling *pansaway* containing about twenty-five persons came up to them under the pretence of asking for a light. The party, however, at once disclosed their real intentions as they boarded the boat and threatened the manji and mullahs, (holding, as these latter assert, drawn swords over them,) to injure them if they did not keep quiet, there being other boats, not far distant, at the time. The manji and two of his mullahs, (witnesses Nos. 1 and 2,) jumped or were pushed overboard and swam to the bank which was not many yards off, but which was jungle without any habitations any where near. The manji and mullahs then from the bank saw their boat taken on by the dacoits and learnt nothing more of it, though the day following they proceeded in the direction to see if they could get any information. They did not recognise any of the dacoits. One of the mullahs Khooshal, who was in the boat, has never appeared since, and it is their belief he either was murdered by the dacoits or sank in the river, or lost his life in the jungle, which was very dense on both banks of the river where the dacoity occurred. The complainant did not give any information to the police till after he had gone up to Bhangah in zillah Furreedpore, where having related his story to the parties to whom was consigned the cargo he was entrusted with, he was sent back with some gomastahs to report the occurrence to the police and endeavour to get traces of the property. The prisoners Nos. 18, 19, 20, 21 and 25, with others were arrested on information originally given by one Ariz chowkeedar, and witness No. 24, who had learnt that a large quantity of English manufactured cotton had been sold in the neighbourhood of Delatee in the month of Poos last. The prisoners Nos. 18, 19 and 20, both before the police and subsequently before the deputy magistrate of Khoolnah, made a detailed confession of their participation in the dacoity, and of prisoners Nos. 21 and 25, with others being their associates. In this court the prisoners all plead *not guilty*, and in their defence the prisoners Nos. 18, 19 and 20, urge that they were beaten by the police and told that whatever they admitted as to the dacoity would be to their advantage. The confession before the deputy magistrate they deny having made while in the possession of their senses.

The witnesses, however, to the confession, both before the police and the deputy magistrate of Khoolnah, are clear and explicit in their statements that the confessions were voluntary, and that no kind of intimidation or persuasion was exercised over the prisoners.

The plea of being beaten by the police is affirmed by the witnesses cited in the defence, but as all the witnesses agree

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there were a large number of persons present at the time, the story seems rather incredible. Either the police darogah was out of his senses, subjecting prisoners to ill-treatment in the presence of a host of witnesses, or the whole story is a fabrication. Be it, however, true or false, it in no way accounts for and invalidates the confessions taken before the deputy magistrate of Khoolnah, before whom the prisoners admit they were not subjected to any kind of intimidation or persuasion.

Against the prisoners Nos. 21 and 25, is the circumstantial evidence of witnesses Nos. 24, 25, 26 and 27, against the former, and that of witnesses Nos. 3, 4, 24, 10, 11 and 12, against the latter.

The prisoner No. 21, Anundo Paroi, admits having had in his possession a considerable quantity of cotton thread (No. 40,) which he sold to one Rughoonath Kur, (prisoner No. 29, since acquitted.) He asserts he found the cotton floating in the river, but he cannot substantiate this statement by the evidence of any witnesses, and his name is mentioned in the confessions of prisoners Nos. 19 and 20, as being one of the associates in the dacoity.

The prisoner No. 25, Sudanund likewise admits his having in his possession two bundles of the cotton thread, and that he showed it to the police when search was made, he having placed it on a Bhur-tree not far from his house. His assertion that he picked up the thread floating in the river he cannot substantiate, though he cited witnesses to establish the fact. This prisoner is also named in the confessions of prisoners Nos. 19 and 20.

The trial is held under the provisions of Section 3, Act XXIV. and with reference to the confessions before the deputy magistrate of Khoolnah, of the prisoners Nos. 18, 19, and 20, Okur Paroi, Ramdhun Paroi, and Bungshi Paroi, which were voluntary; the evidence of the complainant and the witnesses for the prosecution Nos. 1 and 2, whose relation of the dacoity in every way tallies with the confessions, as to how the offence was committed, and the strong circumstantial evidence on the record, that immediately after the dacoity a large amount of cotton thread answering to the chellan of the cargo in the boat plundered, was being sold in the villages in which the prisoners reside, I convict the prisoners above named of the charge of dacoity and plunder of property valued at Rs. 3,718-15-10, and in consideration of this being the first offence they are convicted of, and of the improved system now introduced in jail discipline, which renders the confinement of prisoners more irksome and more likely to secure the object desired, "the reformation of the prisoner," I sentence them to the limited term of imprisonment with hard labor in irons for seven years in banishment.

The prisoners No. 21, Anundo Paroi and No. 25, Sudanund Paroi, I convict on the charge of "knowingly having had in

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their possession property acquired in the dacoity committed on the complainant," and in consideration of the reasons assigned in the sentence on the prisoners Nos. 18, 19 and 20, equally applicable to them, I sentence them to imprisonment with hard labor in irons for 6 years in banishment.

The charge of murder of the mullah Kooshal is not, I consider, in any way established on the record. When the complainant and witnesses Nos. 1 and 2 left their boat, they saw Kooshal uninjured. He may have failed to reach the shore, or he may have lost his life in the jungle, or he may yet some day make his appearance. All these contingencies are possible, and as it does not appear the dacoits could have any object in taking his life, I therefore cannot convict on the charge as in the calendar.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The only evidence against the prisoners is their confessions; but we do not think that these, the truth of which we see no reason to doubt, suffice to connect them with the dacoity charged, or the guilty receipt of property acquired by it. The admissions of Nos. 18, 19 and 20, are only to the effect that they were unwilling spectators of the dacoity, which was committed by a patrol boat, and that they refused to receive any of the proceeds; while Nos. 21 and 25, profess entire ignorance of the dacoity and say that they found the property floating on the water, without suspicion of its being other than wreck property. It may have been their duty to notify to the authorities the finding of the property; but the failure to do so, does not render them liable to conviction on the charges brought against them. We acquit all the prisoners and direct their release.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND RAMPERSHAD DAS

versus

BEDESHEE KHAN (No. 1,) ROBEEOOLLAH FUQEER (No. 2,) ALUM SHEIKH (No. 3,) AND SOTOO KAREEGUR (No. 4.)

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Sentence passed by the sessions judge confirmed; the crimes of which they are found guilty being clearly brought home to the prisoners by the confessions before the magistrate and in the mofussil by the finding of the property.

CRIME CHARGED.—Nos. 1 to 4, 1st count, dacoity in the boat of Modoosudun and Woodoychand Shah, in which property valued at Co.'s Rs. 115-5, was plundered and the prosecutor and Batean Das, his boatman, were slightly assaulted; 2nd count, retaining in possession property, knowing the same to have been acquired by the said dacoity.

CRIME ESTABLISHED.—Nos. 1, 2 and 4, dacoity on the boat of Modoosudun and Woodoychand Shah. No. 3, knowingly receiving property plundered in dacoity.

Committing Officer.—Moulvee Abdool Jubbar, deputy magistrate of Serajgunge.

Tried before Mr. Lowis Jackson, officiating sessions judge of Rajshahye, on the 10th July, 1856.

Remarks by the officiating sessions judge.—The prosecutor, Rampershad Das, was proceeding in charge of a boat laden with cloths from Serajgunge to a place called Khola Hati in the Rungpore district, and at the end of his first day's journey, made fast for the night at Sydabad, a place of some little importance, where a *mela* was being held. He had only two men in the boat, one of them like himself, an elderly man. About midnight they were aroused by persons striking about with *lattees*, he and one of the boatmen (witness Batean No. 2,) each receiving a blow, upon which they jumped into the water and escaped. The marauders, three or four in number, who had a torch with them, remained a short time in the boat, and after their retreat, the prosecutor discovered that two of seven bales which he had on board had been taken off, this occurred on the night of the 4th April; next morning, the prosecutor returned to the merchants, his employers, who took him to the thannah.

The darogah, who made the inquiry, learning that Bideshee, a person of bad repute, had been absent from home on the night in question, took him up. He confessed, mentioning his accomplices and giving the clue to the recovery of a large proportion of the plunder. After this, the prisoners Robeeoollah Alum and Chotoo or Sotoo, were apprehended, various portions of the plunder were traced to them, aggregating twenty-five *thans* out

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of the thirty comprising the two bales, and, moreover, two of the three prisoners, Robeeoollah and Sotoo, confessed to having committed the dacoity.

Bedeshee, in his confession, stated in the evening before the dacoity, he and Alum had boarded the prosecutor's boat, under pretext of asking for *huldi*, and ascertained what its contents were, and the prosecutor, before the deputy magistrate and in this court, deposed to the same fact, and identified Bedeshee and Alum, as the persons who had so come to his boat, his ground of identification being that they have both of them, the neck enlarged by *gootee*, which is common in that part of the country, one of the boatmen also identified Alum, who is an unusually large powerful looking man, but as neither prosecutor nor witness had made any allusion to the circumstance in their information before the darogah, I cannot attach much importance to the statement.

The confessions, however, of Sotoo, before the darogah, and those of Bedeshee and Robeeoollah, repeated before the deputy magistrate, are perfectly satisfactorily proved, and though they exhibit certain discrepancies, yet they are clear upon the main fact of the four having committed this robbery together, and being so well supported by the discovery of so large a proportion of the plunder, they appear amply sufficient for conviction.

As to Alum, he has denied the charge throughout, and although the confessions of the others implicate him with remarkable unanimity as the principal offender, yet as there is no direct evidence against him as to the actual dacoity, yet possession of part of the stolen goods is quite brought home to him, he having sold five *thans* to the witness No. 18, (Doloo Kareegur,) and part of another *than* being found on his person, the felonious receipt is therefore fully established.

The cloths have been identified by a gomashta and a *paikar* employed by the Mahajuns, who sent the goods as part of the cloths despatched on that occasion.

The prisoners all plead *not guilty*. Bedeshee stated he was servant to Alum, had gone to Sydabad and had taken Robeeoollah across the river, he named some witnesses to his character only, who did not appear, the village in which they lived, having been carried away by the river Juboona, and it not being known where they had gone, and as if they had appeared and testified in their favor, their testimony would have had no weight against the positive evidence for the prosecution, I did not consider it necessary to adjourn the trial on that account.

Robeeoollah stated that he had crossed the river in the boat with the others waiting for some time on account of a squall, he similarly named witnesses to his character, three of whom appeared and were examined, they declined very significantly

making any statement as to prisoner's present conduct or character.

Alum alleging that the charge was got up out of enmity by Bedeshee (he did not say on what account) called several witnesses, both to a general defence and to character, all of whom denied their knowledge of the circumstances of the case, and were unable to speak distinctly as to his character.

Sotoo alleged that the manager of a neighbouring indigo factory had a spite against him, to which he attributed the charge; his witnesses, however, all denied the knowledge of any thing tending his defence, and several of them distinctly stated that he was a person of bad reputation and habits.

I therefore convict prisoners Bedeshee Khan No. 1, Robeeoollah Fuqeer No. 2, Sotoo Kareegur No. 4, of the dacoity with which they stand charged and sentence them, respectively, to seven years' imprisonment with hard labor in irons.

I also convict prisoner Alum Sheikh No. 3, of the retaining in his possession property obtained by the said dacoity, well knowing it to have been so obtained, as charged in the 2nd count, and I sentence him, in like manner, to seven years' imprisonment with hard labor in irons.

This trial was held under the provisions of Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The crimes of which they are severally found guilty are clearly brought home to the prisoners, by the confessions before the magistrate, and in the mofussil by the finding of the property. We see no reason to interfere with the sentence of the sessions judge.

PRESENT:

J. S. TORRENS AND E. A. SAMUELLS, ESQS.,
Officiating Judges.

GOVERNMENT AND RADHAMOHUN SAOUT
versus
DUSSEERUDDIN PEADAH (No. 3,) AND MOHADEB DIKHIT (No. 4.)

Midnapore.

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Case of DUSSEERUDDIN and another.

One prisoner sentenced to five years' imprisonment with labor and irons on a charge of culpable homicide, committed in an assault in course of which deceased became insensible and was drowned on falling into the water. Second prisoner sentenced only to one year and six months with labor commutable to fine, in consideration of the limited part he took in the assault.

CRIME CHARGED.—Wilful murder in having seized Chundee Saout, a defendant, in execution of a decree (whom Mohadeb Dikhit, prisoner No. 4, pointed out) of the moonsiff's court, thrown him down and so beaten him with blows of shoes and sticks that he became insensible, and upon his falling into a tank in this insensible state, he then and there died from the effects of suffocation by drowning.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 3rd June, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty*. It is proved by the evidence for the prosecution that the prisoners having arrested the deceased, Chundee Saout, on a warrant issued in execution of a decree of court by the moonsiff of Niccasee, kicked and unmercifully beat him with their fists and shoes on his head and other parts of his body. The arrest took place on that part of a narrow bunded road immediately below which there is a tank. In the struggle, both, the deceased and Dusseeruddin Peadah, fell into this tank, distant from the bund, scarcely the length of a man. The deceased had been rendered almost, if not entirely, insensible by the beating he had received at the hands of the prisoners, and was, in consequence, unable to extricate himself, which the peadah readily did. Fortunately for the ends of justice, no doubt remains as to the cause of death, viz., beating until a state of insensibility was produced and death supervening from immersion in the water. Some of the villagers, on the alarm being given, came, especially Muddoo Saout, chowkeedar, and would have rescued the drowning man, but were deterred by the threats of the prisoners, that if they did so they would be imprisoned for fourteen years, declaring at the same time that the deceased was shamming. A moment after the deceased sank to rise no more, and the prisoners ran off. On that Muddoo Saout swam in and brought out the body, but life was extinct. With every desire to shew consideration to an officer in the execution of his duty, I cannot but consider the assault and battery made on the deceased most uncalled for and unmerciful. In order to capture and detain the prisoner, no necessity whatever is ap-

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parent for the severity exercised by the prisoners at the bar. In the deposition of the sub-assistant surgeon before this court, the cause of death is, in his opinion, that the deceased must have been beaten until insensible and then thrown into water, whereby he was drowned. The only point for mitigation of punishment is found in the evidence of the witnesses Nos. 6, 12 and 13, for the prosecution, viz., the possibility that the prisoners were under the impression that deceased was feigning, when they deterred others from helping him. But for this, I would have recommended the punishment which they threatened. In consideration of this, however, and in concurrence with the *futwa* of conviction, I have sentenced them each to seven years' imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and E. A. Samuells.) There can be no doubt in this case of a violent assault on the deceased by the peon; and that disabled from the consequences of that assault, on his falling into the water along with the peon, his chief assailant, he was unable to save himself, on which death resulted almost immediately. The evidence for the prosecution proceeding as it does principally from the relatives of the deceased is mixed up with a great deal of exaggeration, both in respect to their statements as to the part which the prisoner, Mohadeb Dikhit, took in the assault, and in the representation that he and the other prisoner No. 4, had interfered to prevent the villagers from saving the life of the deceased, by removing him as they had desired to do, from the tank. We do not think that this latter part of the witnesses' statements is at all to be relied on; certainly not as regards prisoner No. 4, and by no means conclusively, as regards prisoner No. 3. It appears that the statements on this head are to be attributed to the exasperation of the relatives of the deceased at the treatment he had undergone, at the time of his arrest, though it is much in aggravation of the offence of both prisoners that they did not at once adopt measures to remove deceased from the water, when they saw the condition he was in.

The prisoner No. 4, though present at the assault and aiding in it to a certain extent is not shewn to have taken more than a subordinate part, or to have inflicted any of the injuries, which led to the insensibility of the deceased, as is shewn to have been done by the other prisoner, when he and deceased fell into the water. Taking into consideration all the circumstances of the case and discrediting as we do the prohibition on the part of the prisoners against removal of the deceased from the tank, we think five years with labor and irons will be sufficient for the peadah, prisoner No. 3, and one year and six months for the other prisoner with labor commutable to a fine of 25 Rs. if paid within twenty days.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

KHETTO MUNDUL.

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The prisoner was acquitted with reference to the precedent cited.

CRIME CHARGED.—Perjury, in having on the 1st March, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before Captain G. N. Oakes, officiating principal assistant commissioner of Manbhoom, in the suit No. 23, under Regulation VII. of 1799, instituted by Moteelall Missree, in the revenue department of the Govindpore, Sub-division office, that "Byedonath Missree and others, purchased the mouzah Sharmarrah in pergunnah Pandra from Beni Moojoomdar and others, the proprietors of the said mouzah and have the same in their possession, and that Man Singh and Burro Sheekur Manjee, cultivate Shoorsoorey, Kanalee and Bherree Kanalee lands and have taken them on a *jumma* of 14 rupees, and that the rent of the said lands not being paid to the plaintiff Moteelall and others he had instituted the suit." And, in having, on the 26th May, 1856, again intentionally and deliberately deposed in the suit No. 9, under Regulation VII. of 1799, instituted by the plaintiff, Moteelall, before Mr. A. J. Hay, the assistant magistrate and collector of Govindpore, that "Keysublall and Badee Missree, have taken as talook, the mouzah Sharmarrah, in pergunnah Pandra, from Poorsuttom Moojoomdar, that when, he does not know; that the said mouzah Sharmarrah, is in the possession of Baboo Sibnarain Singh and others of the Pandra pergunnah, that in the said mouzah Bung Singh Manjee has a *jumma* of twelve rupees payable to ijardar Mungul Manjee, who is the ijardar under the said Baboos; and that the plaintiff, Moteelall, has instituted the suit on account of not obtaining possession of the said Sharmarrah mouzah, up to this date." These two statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Captain G. N. Oakes, senior assistant commissioner Manbhoom.

Tried before Major J. Hannyngton, deputy commissioner Chota Nagpore, on the 11th August, 1856.

Remarks by the deputy commissioner.—It appears that Moteelall Missree, as agent to Badinath Missree, Keysublall Missree and others, had instituted suits under Regulation VII. of 1799, against certain tenants of Sharmarrah village, in per-

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gunnah Pandra, and that in two instances the prisoner being summoned as witness for the plaintiff, gave evidence as follows, viz.:

In suit No. 23, on the 1st March, 1856.

"The plaintiffs having purchased the village of Sharmarrah, in pergunnah Pandra, from the owners Beni Moojoomdar and others, are seized thereof."

In suit No. 9, on the 26th May, 1856.

"Baboo Sibnarain Singh and others, of pergunnah Pandra, are seized of that village Sharmarrah."

"The plaintiff not having yet obtained possession of that village Sharmarrah has made suit therefore."

The point herein involved, namely, the bonâ fide seizin of the plaintiffs was material to the issue of the summary suits.

Before this court, the prisoner in his defence states that for one year the Bramins collected the rents, and for another year the Baboos collected them.

Before the assistant magistrate of Govindpore, the prisoner had said that he was suborned by Moteelall Missree.

The jury find the prisoner guilty.

The perjury in this case is clearly wilful and deliberate. Concurring in the verdict of the jury, I sentence the prisoner to be imprisoned for four years with hard labor in irons from this date.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) According to the precedent of this Court at Page 773, of Volume IV. Part II. for 1854, in which it was ruled that "when a charge of perjury is based upon contradictory statements on oath, such statements must be recorded in the same case," we consider the prisoner is entitled to his release, as the charge shows that his alleged contradictory statements were made in two separate cases. We acquit the prisoner.

PRESENT:

J. S. TORRENS AND E. A. SAMUELLS, ESQS.,
Officiating Judges.

GOVERNMENT

versus

HAKEE NUSHYO (No 17,) AND MATOM NUSHYO (No. 18.)

Rungpore.

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Case of HAKEE NUSHYO and another.

Prisoners convicted of culpable homicide.

CRIME CHARGED.—Wilful murder of Dookhah Nushyo.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bograh.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 21st August, 1856.

Remarks by the sessions judge.—There appears to have been an intrigue of some years standing between the deceased and Rohee, witness No. 1, the step-mother of the prisoner, Hakee (No. 17.) On the night of the 9th April, the deceased was seized either going to Rohee's house (or coming out of it as stated by the prisoner Hakee, in his confession) first by Hakee who called his neighbour, Matom (No. 18,) to his assistance, when the two proceeded to beat their viction till he fell senseless and was then carried or dragged along to the front of the house in which Hakee himself lives, where they tied his hands behind his back, and bound him to a post, leaving him there until he expired some little time after.

The evidence and the confessions made by the prisoners, before the darogah and the joint-magistrate, leave no doubt of their having been the parties by whom the injuries, inflicted upon the deceased, and which were, without doubt, the cause of his death, were inflicted. But neither the evidence nor the admissions will be found to account satisfactorily for the very severe injuries described in the deposition of the medical officer. No doubt the prisoners have softened as much as possible the circumstances, and perhaps the witnesses may have been inclined to do this also to some extent, or they possibly did not see the full intent of the ill-treatment inflicted by the prisoner.

Mr. J. Taylor, medical officer.—Mr. Taylor, the medical officer, found extensive contusions on the back over the right ribs. Three of the left lower ribs in front were broken. The spleen was ruptured in the concave side to the extent of about three inches and about a pound of dark blood was found in the cavity of the abdomen. There was, moreover, a dislocation of the vertebræ of the neck which he was of opinion took place after death, as there was no contusion or extravasation apparent. He considered it probable that the deceased had been lying stomach

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downwards and that the contusions were caused by blows of the fist or of the feet, or by some one jumping upon his back while so lying, and that the pressure on the ground or other hard substance on which the deceased may have been lying, caused fracture of the ribs. He considered that death was to be attributed to the violence of the beating as well as to the rupture of the spleen, and that it must have been almost immediate. The spleen was diseased and might have been easily ruptured.

The body, when it came in, was considerably advanced in decomposition and smaller surface injuries would not therefore have been apparent, but the darogah mentions that the skin was abraded in five places above and below the eyes, and this would consist with Mr. Taylor's suggestion, that the deceased was probably thrown face foremost. With regard to the dislocation of the vertebræ of the neck, Hakee, prisoner No. 17, stated that it had been caused by dragging the body from the house, into the court-yard.

No. 1, Rohee Aorut.
,, 2, Phelanee Chokree.

The eye-witnesses in the foujdary, and when questioned on the subject in this court also, state that when deceased was taken up from the place where he was beaten, to where he was tied up, Matom, prisoner, gave him a wrench of the head, but if this had been sufficient to dislocate the vertebræ, death would, I apprehend, have been the immediate result. Had the evidence been conclusive on this point, there could have been no doubt that the verdict must have been one of wilful murder.

The only eye-witnesses to what took place before deceased was bound, in the manner described, before Hakee's house are his step-mother Rohee, and sister, Phelanee Koreem, the third witness,* though he spoke to the previous ill-treatment of the deceased before the joint-magistrate, was silent on that subject here, I think it probable he did not come, as he stated in this court, till the deceased had been bound. The confessions before the darogah and joint-magistrate have been duly verified and are proved to have been voluntarily given.

* No. 3, Koreembux Nesshyo.

Opinion of the law officer.—The law officer considers the evidence, according to the Mahomedan law, insufficient for conviction on the count charged or in the minor one of culpable homicide, but finds them guilty of having caused the death of the deceased and declares them liable to punishment at the discretion of the court. This appears to be in effect a verdict of culpable homicide, and as such, I might opine act upon it, and pass sentence at once.

Opinion and recommendation of the sessions judge.—I do not think that the intent to murder is necessarily to be inferred, but the case is, in my opinion, one of very aggravated culpable

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homicide. The motive in the case of Hakee, prisoner No. 17, is probably, as stated in his confession, shame for the disgrace brought upon the family by the intrigue carried on by the deceased with his step-mother. Matom, No. 18, apparently had no motive which could in any way be held to justify his mixing himself up in the matter. I would convict both prisoners of aggravated culpable homicide, and sentence them, under the circumstances, to fourteen years' imprisonment with labor in irons. The prisoners will remain, as at present, till the orders of the superior Court are received.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and E. A. Samuells.) We do not infer from the circumstances of this case that there was any intention on the part of the prisoners to murder the deceased. It is quite consistent with the evidence, though the point does not come clearly out that the prisoner Hakee may have come suddenly upon the deceased when about to enter the house of his step-mother. There is no proof whatsoever that he lay in wait for him. The assault appears to have been committed entirely with the hands and feet of the prisoners, no weapons of any kind were used. Although therefore the assault was a most savage one, it does not appear to us that a more severe punishment is called for, than that recommended by the sessions judge. We convict the prisoners therefore of culpable homicide, and sentence them as the sessions judge proposes.

PRESENT:

J. S. TORRENS AND E. A. SAMUELLS, ESQS.,
Officiating Judges.

GOVERNMENT

versus

DHUNNOO KHAWRAH, (No. 2,) DABEE RANAH, (No. 3,) GOCOOLPERSHAD JANA, (No. 4,) DHUNNOO SEET, (No. 5,) AND CHUNDEE DHARAH, (No. 6.)

Midnapore.

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Case of DHUNNOO KHAWRA and others.

Prisoners, belonging to a gang of dacoits, transported.

CRIME CHARGED.—1st count, prisoners Nos. 2 to 5, of having committed a dacoity on 8th July, 1851, in the house of Kishtomohun Mahitee, of thannah Kanchunnuggore; 2nd count, prisoners Nos. 2 to 5, of having committed a dacoity on 23rd June, 1852, in the house of Kaleedas Nag, Ghat darogah of thannah Nemal; 3rd count, of prisoners Nos. 2 and 4; and 1st count, of prisoner No. 6, of having committed a dacoity on 5th January, 1854, in the house of Gopal Das, of thannah Nemal; 4th count, of prisoner No. 2; 3rd count, of prisoners Nos. 3 and 5, and 2nd count, of prisoner No. 6, of having committed

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a dacoity on 11th February, 1853, in the houses of Onoopramchund, and Doondeeramchund, of thannah Bamoonarah; 3rd count, prisoner No. 6, of having committed a dacoity on 6th July, 1853, in the house of Boiddonath Dass, son of Panchoo Das, thannah Nemal; and 5th count, of prisoner No. 2; and 4th count, of prisoners Nos. 3 to 6, with being by profession dacoits and having belonged to gangs of dacoits under Sirdars Dhunnoo Bhoonya, and others (convicts.)

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 27th August, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty* and attribute the charges to enmity. They are identified by three approver witnesses who denounced them as having committed the dacoities on which they are respectively arraigned.

The records of the crimes charged, which have been laid before the court in corroboration and support of the testimony of three approver witnesses, are noted in the margin.*

* *Nuthee*, No. 623, attempt to commit a dacoity in the house of Kistomohun Mahitee.
Nuthee, No. 484, dacoity in the house of Kaleedas Nag.
Nuthee, No. 5, dacoity in the house of Gopal Dass.
Nuthee, No. 156, attempt to commit a dacoity in the houses of Doondeeramchund and Onoopramchund.
Nuthee, No. 548, dacoity in the house of Boiddonath Dass, son of Panchoo Dass.

The record of the first of these cases, No. 623, sets forth that the attempt to commit a dacoity in Kistomohun's house, was ineffectual, that the robbers were scared away by the Pykes and villagers having collected. No clue to the offenders was obtained. I would not, however, rely on this report as subversive of the evidence given by the approvers. It is more than probable that the matter was hushed up to avoid the trouble and inconvenience of a futile prosecution. This dacoity is stated by the approvers to have taken place in the house of Santiram, who it appears from a return of the darogah to captain Keighly's purwannah of 14th August, is the uncle of Kistomohun.

The second record No. 484, shows a dacoity to have been committed on the night of the 23rd June, 1852, in the house of Kalee Das Nag, a salt darogah stationed at Ghat Russoolpore, and that the property to the value of Rs. 2,380-11, was plundered.

Witnesses Nos. 1 and 2.

The prosecutor deposed to having recognised several of the dacoits, among them Dhunnoo and Modhoo Booeeahs of Mundopara, witnesses Nos. 1 and 2, of this trial.

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On information given by one Puhulnath Geeree, Chundee Pooriah was arrested on the 27th idem, and the following day confessed to having committed the dacoity together with Dhunnoo Das, witness No. 3, of this trial, Kungalee Dhara, Sumbhooram Naick.

Prisoner No. 3.—Danee Ranah, prisoner No. 3, of this trial Dhunnoo Mundul, Fukeer Booee, Narain Pundah.

Prisoner No. 4.—Goluck Jana, prisoner No. 4, of this trial Dhunnoo Booeeah witness No. 1, of this trial Mudhoo witness No. 2, of this trial Choitun Poriah his uncle was also implicated by him.

This man confessed before the magistrate, naming all the witnesses (approvers) and the prisoners abovementioned of this trial as well as Keshob Poriah and Choitun Poriah. Choitun Poriah was arrested on 27th June, and the next day confessed naming as his accomplices amongst others.

Dhunnoo Das, witness No. 3, Kungalee Dhara, Sumbhooram Naick.

Chundee Poriah, (nephew of examinant) Dhunnoo Khanrah, prisoner No. 2, of this trial, Danee Rana prisoner No. 3, of this trial, Narain Rana, Gocool Jana prisoner No. 4, of this trial, Dhunnoo Booeea, witness No. 1, and his brother (in all probability this is witness No. 2.)

This man also confessed before the magistrate naming Dhunnoo Das witness No. 3, Kungalee Dhara, Sumbhooram Naik, Kukeer Booee, Chundee Poriah, Gocool Jana, prisoner No. 4, of this trial, Dhunnoo Booeeah witness No. 1; Sumbhooram Naik, was then arrested and on 28th June, 1852, confessed before the police to his having committed the dacoity in company with Chundee Poriah, Kungalee Dhara, Mudhoo Booeeah witness No. 2, and Dhunnoo Booeeah witness No. 1, approvers of this trial, Mogun Goriah, Dhunnoo Das witness No. 3, Dhunnoo Khanra prisoner No. 2, of this trial, Mudhoo Samoee, Danee Rana prisoner No. 3, of this trial, Gocool Jana prisoner No. 4, of this trial and others. This man also confessed to the crime before the magistrate naming the aforesaid prisoners and witnesses (approvers).

Keshob Poriah was arrested and in his confession before the police taken on 28th June, 1852, implicated Dhunnoo Das witness No. 3, Chundee Poriah confessary's elder brother, Choitun Poriah, Sumbhooram Naik, Kungalee Dhara, Gooriee Dhara, his brother Dhunnoo Khanra, prisoner No. 2, Danee Rana prisoner No. 3, Dhunnoo Seet prisoner No. 4, Dhunnoo Booeeah witness No. 1, Mudhoo Booeeah witness No. 2, Kisto Jana, Gocool Jana prisoner No. 4, inhabitant of Chundeebeytee adding that the last named had twelve men under him. This man also admitted his guilt before the magistrate naming amongst others all the prisoners and witnesses aforesaid of this trial.

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Srimuttee Keymee, mother-in-law of Chundee Poriah, admitted before the police and the magistrate that her daughter, Chundee's wife, deposited in her house the shawl and musquito curtain which were then produced.

The prisoners Nos. 2, 3, 4 and 5, as well as the three approver witnesses were arrested at the time, but denied their guilt. In the houses of prisoners Nos. 2, 3 and 5, some contraband salt was found and they were forwarded to the salt agent at Hidglee. The police released the others, but sent in several men to the magistrate, five of whom, viz. Sumbhoo Naik, Keshob Chundee and Choitun Poriahs and Musst. Keymee were sentenced to nine and four years' imprisonment by the sessions judge on 2nd November, 1852.

The next record for consideration is, that of the dacoity with wounding in the house of Gopal Das No. 5. The crime was committed on the 5th January, 1854, and property valued at Rs. 184-14, was plundered. Narain Mundul Chowkeedar swore he recognized in ipso facto Ghoonoo Baroee, Taronee Poriah and Chundee Geeree.

The prosecutor in his deposition, taken on the following day, spoke to his recognition of Durpo Geeree, Ghunnoo Baroee, Tarachand Poriah, Kishoo Pridhan, Lukhun Mytee, Chundee Geeree, Jankee Khutwa, Burrut Bur, Rudroo Mytee, Seetaram Gyen. A neighbouring chowkeedar, Pursooram Patur, deposed, that hearing the alarm of dacoits he roused the villagers in his beat, but that Seetaram Gyen, Horee Booeeah, Rutton Das, Pohul Das, Poorsootum Das and Lukhun Mytee, were absent from their houses and that he suspected them. Lukhun Mytee, was in consequence arrested on 8th January and confessed, implicating Horee Booeeah, Rutton Das, Seetaram Gyen, Pooroosootum Das, Pohul Das, Mudun Booeeah, Dhunnoo Das witness No. 3, of this trial his brother, Puchoo Das, four or five others names unknown and Urjon Geeree (maternal uncle of Gocool Jana prisoner No. 4.) This man also confessed before the magistrate on the 12th January and naming six of his accomplices added that Rutton Das had placed him in charge (under the orders) of Dhunnoo Das witness No. 3.

Mudon Booeeah, was arrested and on 10th January, confessed before the police and named as his accomplices in the crime. Rutton Das, Huro Booeeah, Gocool Jana prisoner No. 4 of this trial, Dhunnoo Das, approver witness No. 3, Urjon Geeree, Pohul Das, Seetaram Gyen, Lukhun Mytee, Poorsootum Das, Dhunnoo Khanra, prisoner No. 2, of this trial. This man also confessed before the magistrate on 12th January, implicating amongst others the aforesaid prisoners and witness of this trial.

Poorsootum Das, confessed in the mofussil on 9th January, that at the bidding of Dhunnoo Das witness No. 3, he went to

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the rendezvous a place for the cremation of bodies, and saw Lukhun Mytee, Rutton Das, Urjon Geeree, Pohul Das, Seetaram Gyen, Modun Booeeah and others who committed this dacoity.

This man, in his examination before the magistrate on 12th January says, that Rutton Das, called him to the place of meeting above mentioned when he saw Horee Booeeah, Seetaram Gyen and ten others, that he then fled.

Dhunoo Das, approver witness No. 3, of this trial was arrested on 8th January, 1854, and on the 10th confessed that he went at the call of Rutton Das, to a place for the cremation of bodies, and implicates Horee Booeeah, Kannoo Mannah, Dhunnoo Khanrah, prisoner No. 2, Soondur Das, Chundee Dhara, prisoner No. 6, Urjon Geeree, his nephew Gocool Jana, prisoner No. 4, Parbuttee Bearer, Huro Booeeah, Pohul Das, Modun Booeeah, Poorsootum Das, Lukhun Mytee and Puchoo Das. This confessary denied the charge before the magistrate.

Khannoo Mannah was arrested and on 10th January confessed before the darogah, naming as his accomplices in this dacoity Dhunnoo Das, witness No. 3, Puchoo Das, Gocool Jana, prisoner No. 4, Urjon Geeree, Parbuttee Bearer, Soondur Das, Chundee Dhara, prisoner No. 6, Dhunnoo Khanrah prisoner No. 2, Huro Booeeah and others. Horee Booeeah was arrested and confessed on the 9th January, 1856 and implicated Modon Das, Seetaram Gyen, Lukhun Mytee, Poosrootum Das. Ruttun Das, Pohul Das, Modon Booeeah, Urjon Geeree, Gocool Jana, prisoner No. 4, Puchoo Das and others. Rutton Das confessed on 10th January, and mentioned as his accomplices Dhunnoo Das, witness No. 3, Gocool Jana, prisoner No. 4, Urjon Geeree Lukhun Mytee, Horee Booeeah, Modon Seetaram, Pohul Das, Poorsootum Das and others. This man also confessed at the foujdary naming as his accomplices, Dhunnoo Das witness No. 3, Gocool Jana, prisoner No. 4, Urjon Geeree, his maternal uncle, Horee Booeeah, Seetaram, adding that the two first were Sirdars.

Pohul Das was arrested and on the 10th January confessed implicating Rutton Das, Lukhun Mytee, Modun Booeeah, Haro Booeeah, Seetaram Gyen, Poorsootum Das, Urjon Geeree, Dhunnoo Das, witness No. 3. Seetaram Gyen also confessed on 10th January and named as his accomplices Rutton Das, Dhunnoo Das witness No. 3, Lukhun Mytee, Modun Booeeah, Pohul Das, Poorsootum Das.

The witness No. 3, in his evidence mentions the place of rendezvous to have been a spot in the jungle set apart for the cremation of bodies, and the confessing prisoners mention the same.

There was not sufficient evidence at the time against prisoners Nos. 2, 4 and 6, of this trial to send them in to the sudder

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station, but they were so well appreciated that the darogah of police begged an enquiry might be made into their characters. Lukhun Mytee, Modun Booeeah and three others were, however, convicted by the sessions judge on the 18th April, 1854, and the sentence passed on them confirmed by the Nizamut Adawlut on 4th August, 1854.

The record of the case No. 156, shows that on the 11th February, 1853, a dacoity was attempted in the house of Doondeeram, Onoopram, and Kirtinarain Chundo. The robbers are said to have effected an entrance, but the darogah, who conducted the enquiry, was of a different opinion. Tho case was struck off the file.

The record No. 548, of the dacoity in the house of Boiddo nath Das, son of Puchoo Das, shows it to have taken place on 6th July, 1853.

Boiddonath or Boidee Naiyah, one of the dacoits was seized in ipso facto and on the 7th idem confessed before the police, naming as his accomplices, Dhunnoo Booeeah, witness (approver,) No. 1, Sumbhooram Geeree, Soondur Dulooee, Mudhoo Booeeah, witness (approver,) No. 2, Boodee Sena, and others.

The approver witnesses were sent into the magistrate. Boidee Naiyah was sent up to the sessions, tried and sentenced to seven years' imprisonment. The others were released, but an enquiry into their character was ordered.

To sum up briefly, though the records of cases Nos. 623 and 156, do not exhibit the names of any of the prisoners or witnesses of this trial, and though in No. 548, only the names of witnesses Nos. 1 and 2, appear, yet the record of case No. 484, amply corroborates the evidence of the approver witnesses. In it, these witnesses are frequently mentioned and were arrested at the time.

Prisoner No. 2, Dhunnoo Khanra, was named at the time by 3 confessing prisoners
„ „ 3, Danee Reva, by 4 ditto, ditto.
„ „ 4, Gokool Jana, by 4 ditto, ditto. and as a ring-leader by two of them.
„ „ 5, Dhunnoo Seet. by 1 ditto, ditto

The record of the case No. 5, also fully corroborates the evidence of Dhunnoo Das, witness No. 3. He himself was implicated in the dacoity by five confessing prisoners. He was arrested and made confession in the mofussil though he retracted it before the magistrate.

In this case moreover
prisoner No. 2, was named at the time by 4 confessing prisoners
„ „ 4, „ „ by 5 ditto, ditto.
„ „ 6, „ „ by 2 ditto, ditto.

All the prisoners were at the time arrested in one or other of these cases. So that the evidence of the approvers is no fiction.

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Such corroboration leaves no room to doubt their evidence or the guilt of the prisoners, I therefore convict them of having belonged to a gang of dacoits and recommend that they be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and E. A. Samuells.) This case has been very carefully investigated by the zillah judge, and we concur with him in the conclusion at which he has arrived. The evidence of the approvers, to the participation of the prisoners in the dacoities enumerated in the charge, is direct and positive. This evidence is corroborated by the fact, apparent from the records of two of these cases, that the prisoners were apprehended on two occasions upon the confessions of their comrades, along with the present approvers, and only escaped from want of proof, and the prisoners' witnesses, we observe, not only fail to support the defence, but add their own testimony to that of the approvers, as respects the bad character of the prisoners. We convict the prisoners of belonging to a gang of dacoits, and sentence them as recommended by the sessions judge.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BHOOBUN GHOSE.

Hooghly.

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Case of BHOOBUN GHOSE.

The appeal of the prisoner was rejected, the evidence against him being considered trustworthy.

CRIME CHARGED.—1st count, dacoity on the night of the 27th May, 1849, in the house of Hurrishchunder Dutt, of Goranash Moostoo, thannah Cutwa, zillah Burdwan; 2nd count, dacoity on the night of the 19th October, 1849, in the house of Ishwarchunder Chuckerbutty, of Goragatcha, thannah Poorbasthul, zillah Burdwan; 3rd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—2nd count, dacoity on the night of the 19th October, 1849, in the house of Ishwarchunder Chuckerbutty, of Goragatcha, thannah Poorbasthul, zillah Burdwan; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on 23rd July, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with two specific dacoities and with having belonged to a gang of dacoits. The two approver witnesses confessed to

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the dacoity commissioner to having been concerned in the affair at Goranash Moostoo, (on the night of the 27th May, 1849,) on the 4th June, and 20th March, 1856, respectively. Sreemanto's confession, in which he denounced the prisoner, as an accomplice was made *after* the latter was arrested, and in Hullodhur's confession *the prisoner was not named.* The denunciation, therefore, of the prisoner now is as regards both the witnesses not to be trusted, certainly not without very strong corroborative evidence, of which there is none.

Only one of the two approvers, Hullodhur Ghose, confessed to the Goragatcha dacoity on the 19th October of the same year 1849. His confession is dated 22nd March, 1856. It is in great detail. It relates some unusual incidents and occurrences, and it implicates eight accomplices, of whom the prisoner is one. The witness repeats the same story precisely before me, and names again as engaged with him in the affair the same eight persons he enumerated formerly. The prisoner got up this affair, he was the spy, and his uncle Mondhur, who has been transported for life for dacoity, was the ring-leader of the gang.

Still this alone would be plainly insufficient for conviction, but the corroborative evidence, or what is usually admitted as such in similar cases, is overwhelming. The dacoity took place, as I have said above, on 19th October, 1849. The person, whose house was attacked, overheard and recognised four of the dacoits, the prisoner being one, and deposed to this effect the following morning but one, but I will leave this out of consideration as it does not appear and is not explained why the deponent has not been produced before me to identify the prisoner and repeat his evidence in his presence. But there were two of the party arrested at the time, Moocheeram Bagdi, and Sreeram, the latter one of the four whose names and persons prosecutor heard and recognised in the act. Both confessed, and Sreeram was convicted of the offence and both named the prisoner in this calendar as associated with them in the crime within thirty-six hours of its perpetration. Both have since died in jail. Again eleven days before the prisoner was arrested, one Modoosoodun Ghose, on a charge of dacoity, who confessed to *this* dacoity at Goragatcha, and declared prisoner was concerned actively in it in his company. This confession is dated 15th April, 1856. This Modoosoodun Ghose, was committed to the sessions where he retracted his former admissions, but was nevertheless convicted of being a dacoit. *Now* he would, if produced, say of course nothing against the prisoner *or any one.*

I consider the evidence above detailed sufficient to convict the prisoner on the second and third charges. Both approvers declare the gangs (both giving the same) with which the prisoner acted. His defence is the usual one for dacoits, he

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Case of BHOOBUN GHOSE.

debauched one of the witnesses' niece, and is not acquainted with the other. He cites no witnesses even to character. I sentence him to fourteen years' imprisonment, plus two years in lieu of corporal punishment, total sixteen years' imprisonment with hard labor and irons in banishment from this date.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to disturb this conviction. We think the approver evidence witness No. 2, quite trustworthy with regard to the prisoner being engaged in the Goragatcha dacoity. As he and the witness were named in the confessions of associates arrested at the time, we place reliance on the testimony of the present witness as to the prisoner's complicity in that affair and reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

KHODABUX GAZI.

Hooghly.

1856.

September 30.

Case of KHODABUX GAZI.

Prisoner, a professional dacoit, transported.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. G. D. Wilkins additional sessions judge of Hooghly, on the 28th May, 1856.

Remarks by the additional sessions judge.—The prisoner, Khodabux Gazi, confessed to the commissioner for the suppression of dacoity, on the 12th April, 1856, to having been engaged with a gang in seven dacoities, and has this day said the same before me. Of these seven, it is known that four actually occurred, and in three of the four, a report was forwarded and enquiries made by the police, viz., at Laojurri, Gudkhali and Rughoonathnuggur, all within the last two years.

As the committing officer says in his English abstract, the prisoner in his original confession has given what we know to be an accurate account of some of the particulars of the dacoities at Gudkhali and Rughoonathnuggur, still more (which seems to have escaped the notice of the committing officer,) the person robbed in the Rughoonathnuggur (or Nuggur,) dacoity in his deposition at the thannah taken down on the 24th January, 1855, three days after the dacoity, declared he had recognised the prisoner as one of the robbers. The prisoner owns that "Khodabux Mussulman," is himself.

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Case of KHODABUX GAZI.

I beg to recommend that the prisoner be sentenced to transportation for life.

On perusal of the above remarks the following resolution No. 687, dated the 6th August, 1856, was recorded by the Court. (Present: Messrs. B. J. Colvin and J. H. Patton.)

The Court observe that the calendar contains only the names of the witnesses to the confession of the prisoner at the foujdary, but there is no evidence as to the fact of the occurrence of the several dacoities. The records of those dacoities are, in themselves, insufficient proof of the fact. The case is remanded to the officiating sessions judge for the omission to be supplied. He will call upon the committing officer to adduce oral evidence on the point. The evidence of the person said to have been robbed at Rughoonathnuggur should be taken, when his former statement would be admissible by Section 31, Act II. of 1855.

In reply to the above resolution, the following letter was submitted by the additional sessions judge No. 109, dated the 22nd September, 1856.

I beg to re-submit my proceedings in the case noted in the margin* which was referred by me on the 28th May last, and remanded by the Court's resolution No. 687, dated 6th ultimo.

* Government *versus* KHODABUX GAZI.

The evidence of Kaloo Duffadar proves the occurrence of the Rughoonathnuggur dacoity, and the prisoner was also, as appears by his statements on both occasions, recognised by him at the time. The prisoner has declined adding any thing to his previous defence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) There is no doubt of the occurrence of the Rughoonathnuggur dacoity, from the evidence of the master of the house, and as the prisoner has confessed to being a professional dacoit, and to having been engaged in the above dacoity, we concur in his conviction and sentence him, as recommended by the additional sessions judge, to transportation for life.

PRESENT:

H. T. RAIKES, Esq., *Judge*,
J. S. TORRENS AND C. B. TREVOR, Esqs.,
Officiating Judges.

GOVERNMENT
versus
BIRU SIRDAR.

Jessore.

1856.
September 30.

Case of BIRU SIRDAR.

Prisoner declared by the majority of the Court to be not guilty, under the circumstances of the case, of the crime of perjury, and to be therefore entitled to his release.

CRIME CHARGED.—Perjury in having, on the 27th of November, 1855, corresponding with 12th Ughran, 1262, B. S., deposed under a solemn declaration taken instead of an oath before the acting superintendent of salt chowkees of Jessore, that his name was "Tenai and that he was a mullah in Biru Manjee's boat of 250 *maunds*," such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 16th June, 1856.

Remarks by the officiating sessions judge.—The witnesses to the prosecution prove that the accused was never known but under one name, that of Biru Sirdar, and that on the 27th November last, he gave a deposition before the superintendent of salt chowkees wherein he wilfully perjured himself by representing his name to be "Tenai" and that he was a mullah in Biru Manjee's boat. The solemn affirmation was administered at the court of the superintendent of salt chowkees, while that officer was at Khoolna, and in his presence.

The prisoner pleads "*guilty*" and, in extenuation, that he was induced to make the deposition under a feigned name, by the acting salt darogah, (his name he does not know) who threatened him if he should refuse to do so, and assured him he would not get into any trouble by personating "Tenai" the party required to give evidence.

The witnesses cited by the prisoner, with the exception of witness No. 15, only heard some servant (the name they cannot mention) of the darogah's casually say that the accused had been tutored by his master. Witness No. 15, asserts he heard the darogah tutor the prisoner.

The jury, with whose assistance the trial was conducted under the provisions of Act VI. 1832, find a verdict of guilty against the prisoner.

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Case of BIRU SIRDAR.

I concur in the verdict, as whatever may have been the persuasion or even compulsion exercised upon the prisoner by any of the salt police officers, (though that any was exercised is not satisfactorily established on the record,) he yet had full time and opportunity when before the superintendent of salt chowkees, and taking the solemn affirmation, to consider the crime he would be guilty of, in feigning a false name. The prisoner likewise admits he was well aware beforehand that giving his deposition under a false name was a crime he could be severely punished for; considering therefore there are not extenuating circumstances, which call for a mitigation of the minimum period of imprisonment this court is called upon to give by the regulations in force, I sentence the prisoner, Biru Sirdar, to imprisonment with labor in irons for three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. S. Torrens and C. B. Trevor)

Mr. J. S. Torrens.—The sentence passed by the sessions judge, appears to me to be correct. Prisoner, as the charge is laid, was committed for wilful perjury by a false representation on a point material to the issue of the case before the superintendent of salt chowkees, in which he was being examined. Whether the falsehood consisted in his simply giving a feigned name, or in other and further misstatements or not, so long as the false representation of the name was at all material in the matter under trial, and was wilful and designed, it constituted perjury in the plain meaning of the term. The prisoner, after the charge of perjury was made, admitted throughout, even in the sessions court, that he had wilfully represented himself to be Tenai Mullah, who had been summoned by the superintendent; when so far from being that individual he was Biru, the manjee of the boat. That the sessions judge has not entered into a detail of the grounds in which this false statement was material to the case, does not, as the charge was laid, vitiate the sentence. There was, doubtless, false personation; but there was not therefore the absence of perjury when the personation was to support a wilful and false deposition. The record before us sufficiently shows how and wherein the false representation was material to the issue of the case. The superintendent of salt chowkees was investigating a charge of bribery and extortion against one of his subordinates, and found it necessary to have the deposition of Tenai Mullah, as being able to depose to what had taken place betwixt the officer charged and the manjee of the boat, of which he, Tenai, was a Mullah. The prisoner, being the very manjee, represented that he was Tenai, the mullah, at the instigation, he asserts, of the salt officers, and represented that he had, as a third party, been present, and witnessed the transaction betwixt the individual then under trial and the manjee of the boat, that is himself. He afterwards admitted

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that he was not Tenai; and that the statements he had made were false. The truth or falsity of these statements or of whether the prisoner was Tenai or not, had direct bearing on the issue of the case; and though the details are not stated in the judge's sentence and though he left it to the record to show them, I do not think his sentence should be set aside.

Mr. C. B. Trevor.—The prisoner in this case was committed for perjury, in having solemnly declared that his name was Tenai, and that he was a mullah in Biru Manjee's boat of 250 *maunds;* such deposition being false, and having been deliberately made on a point material to the issue of the case.

The sessions judge remarks "that he concurs in the verdict of the jury; as whatever may have been the persuasion and even compulsion exercised upon the prisoner by any of the salt police officers, though that any was exercised is not satisfactorily established on the record, yet he had full time and opportunity, when before the superintendent of salt chowkees, and taking the solemn affirmation, to consider the crime of which he would be guilty of in *feigning a false name.* The prisoner likewise admits that he was well aware beforehand that *giving his deposition under a false name* was a crime he could be severely punished for." The judge consequently sentenced him for perjury to imprisonment with labor in irons for three years. It appears to me that the sessions judge has *really* found the prisoner guilty of a crime, which is not that for which he was committed, and sentenced as stated by the judge. The crime proved against the prisoner is that of *false personation,* but not perjury; for this crime, it is necessary that the declaration he made be not only false, but also material to the issue of the case in which it was made, and on this last point, the sessions judge has found nothing at all.

As the judge then has not *found the facts* which are necessary to constitute the legal crime of perjury, I am of opinion that the sentence of the judge is erroneous; and that the prisoner is entitled to his release.

Mr. H. T. Raikes.—It appears that the perjury charged was committed before the superintendent of salt chowkees, when investigating a charge of *bribery,* preferred against one of his subordinate officers.

As the charge involved a criminal offence, it was clearly one over which the superintendent of salt chowkees had no jurisdiction. Any deposition therefore taken on oath by him, in support of the charge, cannot, I think, be held to have been taken by a public officer authorized to take the same, and consequently no charge of perjury can be founded thereon under the provisions of Section 13, of Regulation XVII. of 1817. The salt officer's proceedings should have been confined, I think, to a preliminary inquiry, with the object of ascertaining whether proof

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Case of BIRU SIRDAR.

was forthcoming to substantiate the charge of bribery, if brought before the criminal authorities, but statements made with reference thereto could not be made on oath before him.

For the reasons above given, I concur with Mr. Trevor, in releasing the prisoner.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

JADOO GHOSE.

Hooghly.

1856.

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Case of JADOO GHOSE.

The prisoner was convicted of being a professional dacoit and sentenced to transportation for life.

CRIME CHARGED.—1st count, dacoity on the night of the 10th August, 1849, in the boat of Parbuttychurn Mitter, on the Jellinghee near Kaleenuggur, thannah Hatra, zillah Nuddea; 2nd count, in the month of March, 1850, on a boat (owner unknown) on the Bonegaruthee near Jowdanga, thannah Augurdeep, zillah Nuddea; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 19th September, 1856.

Remarks by the additional sessions judge.—The prisoner Jadoo Ghose, is charged with two specific dacoities and with having belonged to a gang of dacoits.

Both the approver witnesses entered in the calendar were engaged in, and have confessed to, the first dacoity on the 10th August, 1849. It was committed on the boat of one Parbuttychurn in the Jellinghee river near Kaleenuggur in the district of Nuddea, and was known and enquired into at the time. The approver witness Manick Ghose, confessed to this dacoity on the 9th June, 1854, when he denounced the prisoner as an associate as well as his fellow-witness. He has repeated his account of the affair on both occasions without variation and with the utmost consistency. The second approver witness Nuboye Ghose, did not implicate the prisoner in his original confession; but which is the same thing, he named him as one of those concerned in the affair, when giving his evidence against another accomplice, Bhogoban, on the 9th June, 1855, long before orders were issued for prisoner's arrest. I have examined the record referred

Sudder Nizamut Adawlut, 1856, Vol. I. p. 916.

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to in original. He has given from first to last the same account of the affair, and with the above trifling exception varied nothing as to the names and number of his accomplices, amongst whom he has throughout denounced his fellow approver witness, Manick Ghose.

There is circumstantial evidence in this case against the prisoner which (taking into consideration the defence he has made before me) sufficiently proves his guilt. The prisoner was chowkeedar of the village when the crime was committed, and once named as the parties who had been engaged in it all those implicated at first and since by the approvers, in consequence probably of some pressure by the police on the knowledge they had of prisoner's character and associates. Again, on the 25th August, 1849, or fifteen days only after the dacoity, the thannah mohurrir reported, I find by the record, to his superior that the property acquired by the dacoity had been found, on prisoner's pointing it out, some of the persons disposing of it being discovered in the act. On being asked to explain how all this occurred, all the answer the prisoner gives is, he does not remember. He *denies* nothing.

The second dacoity also on a boat, which was perpetrated in the month of March, 1850, was enquired into by the police without any formal report or complaint. The approver, witness Manick Ghose, confessed to having been engaged in it, and described all the incidents, in June, 1854, when he named the prisoner as having been associated with him in it. He has to-day repeated his previous statement without variation, as he had previously done in the case of Bhogoban Ghose, on 12th June, 1855, who has been convicted of this and other dacoities and transported for life. There is no other evidence direct or circumstantial on this count, which specially affects the prisoner.

Sudder Nizamut Adawlut, 1855, Vol. II. p. 124.

With regard to the general charge, the prisoner has been implicated in robberies otherwise than in the above two cases. On 18th November, 1851, one Goburdhun, confessed to a robbery of cloth from a cart and denounced the prisoner as an accomplice; and on 20th November, 1851, another accomplice also denounced him in his confession to the same offence, one Modhoo Ghose, prisoner was arrested but discharged by the magistrate for want of sufficient proof. In March, 1851, the magistrate of Nuddea, received notice of a gang of robbers infesting the Jellinghee river, and on making enquiries, ascertained they were the prisoner and approver witnesses in this calendar and others. He required them to furnish security for good conduct which they were unable to do, but on appeal his orders were annulled. In February, 1852, prisoner on fresh information was again required to furnish security and was

again unable to do so; and this time the order of the magistrate, when appealed against, was affirmed.

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Case of JADOO GHOSE.

The prisoner pleads *not guilty*, and when asked to explain his share in the thannah transactions in August, 1849, says, his memory fails him, as to what took place or what share he had in the matter. He calls three witnesses to character only, who have only known him since the dacoities were committed, and know nothing against him *now*.

It appears, by the joint and concurrent testimony of the approvers, that the prisoner was a member of Bhogoban Ghose's gang of dacoits.

I beg to recommend that the prisoner Jadoo Ghose be sentenced, on the first and third counts in the calendar, to transportation for life with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to distrust the evidence of the approvers in this case, the more particularly as when giving evidence against another prisoner (Bhogoban) in a previous trial, they denounced him as engaged in the first dacoity charged; and copy of their deposition made on that occasion has been filed under Section 31, Act II. of 1855, with this record to corroborate their testimony now. We concur in the conviction of the prisoner and sentence him as proposed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BHUGWAN GHOSE, GOALA.

Hooghly.

1856.

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Case of BHUGWAN GHOSE GOALA.

The prisoner was convicted on his own confession of being a professional dacoit.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunderseekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 19th September, 1856.

Remarks by the additional sessions judge.—The prisoner has from first to last admitted he has for years belonged to a gang of dacoits and committed several dacoities, and with regard to two of the six dacoities he has confessed to, viz., those at Baneshurpore and Bashna, the two approver witnesses denounced him as an associate some time back, long before his arrest. In the Baneshurpore affair in 1852, the prisoner was arrested at the time, but discharged by the magistrate for want of sufficient evidence.

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September 30.

Case of BHUGWAN GHOSE GOALA.

I beg to recommend that the prisoner be sentenced to transportation for life with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur in the conviction of the prisoner as a professional dacoit upon his own confessions, and proof of the occurrence of certain of the dacoities in which he admits having taken part, and sentence him to transportation for life.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT

versus

ESHORY DASSEE.

Sylhet.

1856.

September 30.

Case of ESHORY DASSEE.

Prisoner found guilty on her own confession of wilful murder, but in consequence of the evidence before the Court as to the imbecile and stolid state of the prisoner's mind, though to her insanity the civil surgeon did not testify, she was sentenced only to imprisonment for life.

CRIME CHARGED.—Wilful murder of Musst. Kotoo.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 3rd July, 1856.

Remarks by the officiating sessions judge.—On the 26th of May last, Muneeram Deb went to the darogah of thannah Latoo taking the prisoner (his wife) the corpse of the deceased Musst. Kotoo, aged eighteen months and a *dao** with him and deposed that his wife, Musst. Eshory, who had become insane, during the past few months had killed her own daughter with a *dao*. The darogah questioned the prisoner, who confessed and stated that she had not been in a sound state of mind for two or three months past, that her daughter used to annoy her by crying and she killed her in consequence. The darogah examined the corpse and held the usual *sooruthal*. The prisoner denied the charge before this court; but her confessions before the police and the magistrate have been proved by the subscribing witnesses thereto, to have been voluntarily made. The civil surgeon deposed that the prisoner was not insane, but was of a very low scale of intellect, and the native doctor also deposed to the same effect. As the crime with which the prisoner has been charged has been proved by her own confessions, as well as by the evidence of the witnesses, I, in concurrence with the verdict of the assessors, convict the prisoner of wilful murder,

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* Twenty-two inches in length and weighing one lb. and a quarter.

and would sentence her to suffer death; however, in consideration of her very low state of intellect, as deposed to by the civil surgeon, I trust that capital punishment will be remitted, and leave the prisoner to the mercy of the Court.

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Remarks by the Nizamut Adawlut.—Present: (Messrs. J. S. Torrens and C. B Trevor.) The act of murder in this case is confessed to by the prisoner, and so clearly established, that the only question left for our consideration is, whether, as recommended by the sessions judge, the state of the prisoner's mind, at the time of the act, calls for any mitigation of punishment according to former practice of this Court, and should prevent capital sentence. It does not certainly appear from the evidence, which has been taken on the point, that the prisoner is actually insane. Her husband, in his statements from the first, deposes that she was in such a state of mind, especially from an illness, which she had shortly before the occurrence, as to be unconscious of her acts. The other witnesses, the neighbours and the chowkeedar, without going quite so far as the husband, depose to her having been at times "*behosh*" after the above illness; and all very distinctly state, that she was always in so stolid and imbecile a state of mind, as to make them consider her to be foolish. The civil assistant surgeon, without being able to testify as to any actual insanity, deposes to the prisoner's being of a very low order of intellect. Under all these circumstances, referring to the precedent of this Court in the case of Toary Chue Oung and Mounghoo, where the prisoner was found guilty of murder, but shewn to be of a low order of intellect, and sentenced only to imprisonment for life, and to other precedents in like cases, we think that the present case is one in which it would be unsafe to pass capital sentence; and it is accordingly ordered, that the prisoner be imprisoned for life in the Alipore jail with labor suitable to her sex.

PRESENT:

J. S. TORRENS AND E. A SAMUELLS, ESQS.,
Officiating Judges.

BURSA MAJEE

versus

KUROO MAJEE (No 1,) DHURMOO MAJEE (No. 2,)
AND TWO OTHERS.

Bhaugulpore.

1856.

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Case of KUROO MAJEE and others.

On suspicion of witchcraft, prisoners (Sontals of one family) murdered certain females. Two of them sentenced capitally: rest transported.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Mr. Rivers Thompson, deputy commissioner of the Sonthal Pergunnahs.

Tried before Mr. G. U. Yule, commissioner of the Sonthal Pergunnahs, on the 6th September, 1856.

Remarks, by the commissioner of the Sonthal Pergunnahs.—The circumstances are so fully detailed by the deputy commissioner* in his English proceeding of the 2nd July last, that I

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* It is necessary to premise that Kuroo Majee, prisoner No. 1, is the father of the other three prisoners and the *moostajeer*, or headman of the village of Noonbutta, where the murders, the subject of this trial, occurred.

It appears that during the months of July and August last, the cholera broke out in the village of Noonbutta, and carried off many of the inhabitants. Among these the wife of Dhoormoo Majee, prisoner No. 2, fell also at last a victim to the disease, and death having been brought into his own household, Kuroo Majee, defendant No. 1, summoned an assembly of the villagers to ascertain the causes of the fearful mortality which had come amongst them and to discover some means of preventing its continuance.

The meeting was convened by the Majee's sons, defendants Nos. 3 and 4, and held publicly in the Majee's house. Nearly all the villagers appear to have attended, and during the whole night the subject of the great mortality then prevalent amongst them, was discussed.

Kuroo Majee seems to have urged from the beginning that the deaths which had occurred so rapidly amongst them, were caused by witchcraft, and appears to have pointed to the four women (who were subsequently murdered) as the authors of their sufferings.

It is not clearly established that the others who were present dissented from this view, and probability leads one to believe rather that the majority of the assembly coincided in the opinion that the women alluded to had been instrumental in destroying so many of their relatives.

At any rate, on the following morning, the four women, Doorga and Choonea, the wife and daughter of the prosecutor, and Doomnee and Kapora, the wife and daughter of Singh Rai, with some others were brought to the Majee's residence by the defendants, Lalloo and Ragha. During the day, the women were placed under examination, probably with a view to lead to a confession, and in the afternoon in the presence of the whole of the villagers, they were led out to a meadow adjoining the village and there murdered by the four prisoners.

The plaintiff and many others of the place appear to have fled from the scene of the murders and the defendants also seem to have left the village after a few days. After a time the plaintiff brought his case to the notice of

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Case of KUROO MAJEE and others.

need not enter into details. It is satisfactorily proved that the four prisoners, father and three sons, suspecting witchcraft to be the cause of an unusual number of deaths in their village, and one in their family, held a meeting of the villagers and deciding that the wife and daughter of the prosecutor and also the wife and daughter of one Singh or Sakhraij were the witches, the four prisoners deliberately murdered these four unfortunate women.

Witnesses Nos. 1, 2, 3, 4, 5 and 6.

In consequence of the disturbances, no complaint was made at the time August and September, 1855, but when quiet was restored the plaintiff in this case and one Lukheeram complained of the murders to Mr. Fitzpatrick their zemindar in December, and the case being taken up was enquired into by the police and the Bhaugulpore magistrate, but the prisoners having fled nothing was done till April, when having returned home they

the zemindar, Mr. Fitzpatrick, who referred him to the police of the Bowsee thannah, where an enquiry was instituted. The defendants having departed from the place, the prosecutor and his witnesses were after record of their depositions, forwarded to Bhaugulpore, where their statements were again committed to writing. These papers I have not been able to obtain.

The culprits still being at large, no further measures were taken in the matter till the month of April, when on their return to their homes, the defendants were apprehended and the parties appeared in my court to renew their charges. I was ignorant at this time that the case had previously been instituted in the magistrate's court at Bhaugulpore.

From a careful examination of the proceedings, I am fully persuaded that the charge brought against the prisoners is a true one. The prosecutor bears about his person, marks of severe wounds, which he received in the attempt to save his daughter. The events that preceded the murders and the murders themselves, happened in open day, before a large concourse of people. Almost the entire village community have appeared before me to prosecute the charge, and nothing has been disclosed in the course of the trial to show that reasons, other than the desire to satisfy justice have led to the prosecution of the four defendants.

It is to be observed that even in the defence which the prisoners urge, much is found that tends to support the conviction. Though they deny the charge of murder, they admit their presence at the deaths of the women, they still assert that they were witches, and that by their sorcery, the sickness and deaths had occurred in the village. Further, the position of the first prisoner, as headman of the place, connected with the affliction that had befallen his own family, all establish the motive for committing the acts, for which he and his sons are now brought to trial.

It will be seen by the evidence adduced in the trial, that Kuroo Majee, defendant No. 1, was the chief originator of the whole proceedings, which resulted in the murders of the four women. No grounds exist for a palliation of this crime, which was deliberately planned and most ruthlessly executed. Justice demands therefore that he should suffer death.

The other prisoners are his sons and much under his influence, and though the evidence establishes that all three were guilty of the same acts as their father, I would, in consideration of that influence which was brought to bear upon them, spare their lives. A sentence of transportation for life will probably be a sufficient example.

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were apprehended. The deputy commissioner could not obtain the papers of that enquiry, but I have since procured and herewith forward them. There are some discrepancies in the story told before the police and magistrate of Bhaugulpore and before the deputy commissioner, but these are not greater than might be expected when a police officer or a foujdary mohurrir took the evidence at one time and an European officer at the other. The foujdary depositions clearly shew, I think in one or two instances, that the writer of them put down more than was told. There is no material variation, however, as to the charging the prisoners in this case with being the principals in the murders.

After the time that elapsed between the occurrence of the crime and the investigation into it, any examination or recognition of the bodies was impossible; but the Court will observe that the prisoners far from denying the fact of the murders having been committed, allow that they did take place and three of them confess they were present and saw what occurred, merely denying that they were the perpetrators. One witness also No. 1, states that when the police went out, the bones were still lying where the women fell.

Kuroo Majee* was the farmer and head of the village at the time and the other three prisoners are his sons. Without his consent, the murders could not have taken place; and the evidence shows that he took a leading part in the proceedings before the murders, and himself set the example in them by knocking down the first woman killed, and murdering her by blows with a sword as she tried to rise.

* Prisoner No. 1.

Dhurmoo Majee prisoner No. 2, took the second part and with a blood-thirsty ferocity for which the supposition of his father's influence on his conduct affords no palliation, attacked with a sword a helpless girl, ten years of age in her father's arms and wounding the father severely, pursued the girl when she tried to escape and completed the murder on overtaking her. It may be noted too, that the death of his wife by disease seems to have been the proximate cause of the murders.

For these reaaons I consider both the prisoners Kuroo Majee No. 1, and Dhurmoo Majee No 2, deserving of death and propose to sentence them accordingly.

As to the other prisoners I concur with the deputy commissioner, and therefore do not refer their case, but of course I will not pass sentence upon them until I know the Court's opinion regarding the guilt of the others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and E. A. Samuells.) This is a case referred by the commissioner of the Sonthal Pergunnahs, under the provisions of Act XXXVII. of 1855. We concur in the opinion of that officer; and consider, with reference to the example required,

and the extreme atrocity of the crime of which the prisoners have been convicted, that capital sentence is called for in respect to Kuroo Majee No. 1, and Dhurmoo No. 2. With regard to the other prisoners, on whom capital punishment has not been recommended, the commissioner's orders are final, under the Act above quoted.

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Case of KUROO MAJEE and others.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS., *Officiating Judges.*

GOVERNMENT

versus

RAJOO SHANA.

Hooghly.

1856.

September 30.

Case of RAJOO SHANA.

The Court not being satisfied that any wilful false statement had been made by prisoner and that none appeared in his deposition than a contradiction arising from confusion of mind, acquitted the prisoner of the crime of perjury.

CRIME CHARGED.—Perjury, in having on the 11th June, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the additional sessions judge of Hooghly, first "that he did not see the prisoners beat the deceased," and afterwards on the same date and before the same authority "that when he had reached Doyah's house, the prisoners were there and were beating the deceased, that he saw them beat deceased." Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Wilful and corrupt perjury.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 23rd July, 1856.

Remarks by the additional sessions judge.—The history of the case in which the prisoner, who was a witness in it, was indicted for perjury, has been already given in the trial this day of Belassy Dassy.* The prisoner in this calendar, first deposed before me that he had not seen the prisoners beat the deceased Chintamoni, but had merely seen them as they were running away on going to Doyah's house to see the cause of disturbance there. Subsequently again before me he disposed that he *had* seen the prisoners beat the deceased after he *had* reached the house. It is most probable the first version is the true one. All the excuse the prisoner offers is, that he is a poor villager and does not remember what he may have deposed to. He calls no witnesses.

* No. 1, of statement No. 8, for July, 1856.

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Case of RAJOO SHANA.

Such reckless false-swearing in cases where parties are accused of the most heinous offences is very common, but can never be allowed after detection to go unpunished. I concur with the law officer that the prisoner is guilty of wilful and corrupt perjury on a matter of the greatest importance to the issue of the case, in which he appeared as an eye-witness, and I sentence him to three (3) years' imprisonment with hard labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The prisoner has been convicted of perjury for having deposed in his examination before the sessions court that he had not actually seen the parties, who were then arraigned on a charge of murder, beat the deceased; and then afterwards on the same day, and in the same examination, for having stated, that he *had* actually witnessed the beating. It appears that in the first part of his examination, in chief the witness described what he had seen in the yard in which the murder occurred; which was, that, as he approached, the prisoners were running off after the attack on the deceased. On a question being put to him he then stated that he had not actually seen the blows struck, on which, on being subjected to what we conceive was somewhat severe cross-examination, he contradicts himself by stating that he had seen the beating. It does not appear clear to us from the nature and course of the questions which were put to the prisoner, that there was any wilful false statement made by him, or that there was in fact any thing more than a contradiction arising from confusion of mind, nor can we detect any motive which the prisoner could have had in making the second statement for the falseness of which he has been brought to trial. On this view of the case we acquit him of the crime.

SUMMARY CASES.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.
Officiating Judges.

BUNDHUN CHAMAR AND GOVERNMENT
versus
TIRMUL CHAMAR.

Shahabad.

1856.

September 17.

Case of TIRMUL CHAMAR.

Case returned for further trial to the lower court which had overlooked new law of evidence.

CRIME CHARGED.—Culpable homicide of Bechun, a boy, son of Bundhun Chamar.

Committing Officer.—Mr. H. C. Wake, officiating magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 13th August, 1856.

The following letter No. 134, dated 18th August last, was submitted by the officiating sessions judge of Shahabad.

The circumstances of this case are as follows:

On the 10th July, Rootee Doosadh, chowkeedar, came to the jemadar at Buxar chowkee and informed him that, on the preceding evening, Bundhun Chamar had told him that his son Bechun had been struck by the prisoner on the head with a bamboo club in consequence of his not driving a pig out of a field belonging to Mukoond Chamar; the chowkeedar thereupon went and saw that the boy had been wounded; he told Bundhun Chamar to come to the police chowkee, the latter said he wanted to apply something to his boy's head and that he would come the following morning; the chowkeedar then apprehended the prisoner who fell down at the feet of Bundhun Chamar saying that he had committed a fault and begging for pardon. On the next day Bundhun Chamar told the chowkeedar that the boy had died from the effects of the wound.

The prosecutor before this court states, that his son, the deceased, a boy about eight years old, was playing with his brother Roochea and another boy by name Roopun behind the house. Roochea came in crying and said that the prisoner had told deceased to drive out a pig from a field, and not doing so he had struck him with a bamboo club; that he had fallen down senseless. Prosecutor ran up and found him in that condition in the prisoner's arms, who on being asked why he had struck deceased said that he had committed a fault, and asked for pardon. Rootee Doosadh chowkeedar, Domun Gorait, and others came up, the prosecutor then gave over the prisoner into the charge of Rootee Doosadh, and took the deceased home, where he died before the night was over. Prosecutor, on being questioned said, that he saw a bamboo club on the ground.

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The evidence of the two boys witnesses Nos. 1 and 2, not having been taken on oath before the magistrate, I, in conformity with Circular No. 1, of the 1st February, 1828, have not examined them at all, being mere children, apparently not more than eight, nine or ten years of age, and showing by their answers to my queries that they were not in the opinion of the law officer and myself sufficiently acquainted with the nature and obligation of an oath; this is unfortunate, but the Circular Order left me no alternative, and the consequence is, that there appears to me a failure of evidence sufficient for conviction.

Witness No. 10 says he heard a noise; went out; saw prosecutor with deceased in his arms wounded on the head and speechless; heard from the people who were there that he had been struck by the prisoner with a bamboo club; saw prisoner there, but no club.

Witness No. 11 says that the prosecutor came to his house and told him about prisoner having struck his son with a bamboo club; went with the prosecutor to his house and saw deceased with a wound on the temple; went home and in the morning heard of his death.

Witness No. 12 states that prosecutor came and told him about the prisoner having struck his son; went to the prosecutor's house and saw deceased with a wound on the temple and speechless; then went and apprehended the prisoner near a tree at the distance of two bamboo-lengths from prosecutor's house; prisoner said nothing, except that he had not struck the deceased; afterwards heard from the villagers that the latter had been struck by the prisoner. On my questioning this witness as to his having told the jemadar that prisoner had fallen down and asked the prosecutor to forgive him, he denies that he ever saw or heard prisoner do this; denies having seen any thing in the shape of a weapon near the prisoner. The evidence of Dr. Young, by whom the body was examined, tends to prove that death was occasioned by injuries received on the head, but he does not consider that such were caused by a blow from a bamboo.

The prisoner denies the charge and says that he saw deceased lying in a hole in which were some bones by falling on which the wound was caused.

The club, with which the prisoner is said to have struck the deceased, has not been found.

On referring to the papers connected with the mofussil enquiries, I can find no more evidence. Those who were examined having merely deposed as to what they heard had occurred.

The *futwa* of the law officer convicts the prisoner of culpable homicide; but it appears to me that the evidence is not sufficient for conviction; dissenting therefore from the finding of

the law officer, I beg to refer the case for the orders of the superior Court.

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Case of TIRMUL CHAMAR.

Under the circumstances and nature of the case, I have not thought it fit to admit the prisoner to bail pending this reference.

Resolution of the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money,) No. 794, dated the 17th September, 1856.

The Court, having attentively considered the proceedings held on the above trial, observe that in quoting the Circular Order of the 1st February, 1828, as his reason for not examining the two boys, witnesses Nos. 1 and 2, in the case of Bundhun Chamar *versus* Tirmul Chamar, the judge shows that he has overlooked the recent improvements in the law of evidence. The Court direct that the papers be returned to him, with instructions to take the evidence of both these witnesses, in conformity with the provisions of Section 15, Act II. of 1855; and then either to dispose of the case himself after taking a fresh defence from the prisoner and a fresh *futwa* from the law officer or to refer it to this Court, if such a case should be necessary.

The judge will also call the magistrate's attention to the Circular Order of the 27th March, 1840, No. 42.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

GOVERNMENT
versus
BISTORAM DOME.

Beerbhoom.

1856.

September 17.

Case of BISTORAM DOME.

Appeal rejected.

CHARGE.—Bad character.

This is an appeal against the decision of the sessions judge of Beerbhoom, dated 13th September, confirming the orders of the deputy magistrate of Cutwa, reporting the prisoner to be a bad character and recommending security to be furnished for future good behaviour for the period of three years in 200 rupees, and in default thereof to be imprisoned for that period, with labor and irons.

Resolution of the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) No. 872, dated 30th September, 1856.

The Court observe that the prisoner appears to have fled the country after having been wounded, as is supposed in a felony, and did not again appear for more than a year, though a reward was offered for his apprehension. He has urged nothing in his appeal, and the Court see no reason to interfere with his sentence.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

TALAWUR BURYE

versus

KALLA SHIBDIAL, RUTTUN CHOWKEEDAR, LUCHMUN CHOWKEEDAR AND RAMDIAL.

Bhaugulpore.

1856.

September 30.

Case of KALLA SHIBDIAL and others.

Some prisoners in a case of burglary being village policemen, the magistrate was bound by law to commit the case to the sessions, instead of passing punishment himself.

This case was referred to the Nizamut Adawlut, under Section 5, Act XXXI. of 1841, and Circular Order dated 18th March, 1842, by Mr. D. Cunliffe, officiating sessions judge of Bhagulpore, on the 26th August, 1856.

The circumstances of this case are as follows. On the night of the 1st March last, a burglary was committed in the prosecutor's house, he awoke, and on going out, recognised Luchmun and Shibdial, who assaulted him, and on his giving the alarm, his nephew came to his assistance, and three other villagers, when the nephew was also assaulted by the thieves. The thieves decamped, leaving behind them the grain stolen from the granary; the prosecutor and the witnesses recognised all the five prisoners, amongst whom, Ruttun was the chowkeedar of prosecutor's village, and Luchmun that of another village. The officiating magistrate on the 25th and 29th April, 1856, sentenced Ruttun to two years' imprisonment, and one year more in lieu of corporal punishment, and Luchmun to two years' imprisonment, and the other three prisoners to eighteen months each, all with labor and irons. The prisoners appealed to this court on the 16th May, and a proceeding was sent to the magistrate requesting him to explain why he had himself passed sentence on the prisoners, in contravention of Clause 2, Section 2, Regulation XII. of 1818, as two of them were chowkeedars, and the case was that of burglary attended with assault. The magistrate replies, "that he disposed of the case, as the hole was made from outside, the hand inserted and the property extracted without any of the thieves entering the house, and it appeared to him that the crime of burglary was not committed." I do not concur in the opinion expressed by the officiating magistrate and consider the prisoners, according to law, ought to be committed to the sessions court for trial; but before submitting this report for the orders of the Court, under Circular Order No. 9, 17th July, 1851, I transmitted this report to the officiating magistrate for any further explanation he might deem necessary to make on the subject. He in reply states, that he has no explanation to offer beyond that already supplied, and in his opinion, the sentence of three years' imprisonment was

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Case of KALLA SHIBDLAL and others.

sufficient under all the circumstances of the case, and therefore he did not commit the prisoner for trial.

Resolution of the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) No. 859, dated 30th September, 1856.

The Court, having attentively perused the papers of the case, observe, that th sentence passed upon the prisoners by the officiating magistrate, is clearly illegal. Under Clause 2, Regulation XII. of 1818, he was bound to commit the whole of the prisoners on ascertaining that two of them were village watchmen, and he had no authority in such a case, to convict any of the prisoners himself. The Court quash the officiating magistrate's proceedings, and direct that the prisoners be committed to take their trial before the sessions court. The officiating sessions judge will be good enough to warn the officiating magistrate to be more careful in future in paying strict attention to the requirements of the law.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

MOHABARUT.

Moorshedabad.

1856.

September 30.

Case of MOHABARUT.

A severer sentence than authorized by law having been passed upon a prisoner, who, not being a convict had escaped from jail-custody, the magistrate was directed to modify his order.

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841, and Circular Order dated 18th March, 1842, by Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 18th September, 1856, with the following report.

On the 5th July, 1856, the officiating magistrate sentenced, under Construction 1246, the prisoner in this case, to imprisonment for two years and one year in lieu of stripes, with labor in irons for escaping from the *hajut* guard; but as the prisoner after being committed to the sessions for trial on a charge of dacoity, escaped from the *hajut* guard, before he was tried and sentenced, I am of opinion that Construction 1246, does not apply, and that therefore the officiating magistrate under Clause 2, Section 5, of Regulation XII. of 1818, could not inflict a severer punishment than a sentence of imprisonment for six months, and under Construction 1215, the prisoner is entitled to have the labor commuted to a fine, and under Clause 1, Section 3, of Regulation, II. of 1834, he ought not to be sentenced to imprisonment in irons for this offence.

I have the honor therefore to request that the officiating magistrate's decision be reversed, and to recommend that the

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Case of MOHABARUT.

prisoner be sentenced to six months' imprisonment with labor, the labor commutable to a fine of 20 rupees.

I beg to submit a copy of the officiating magistrates explanation of his proceedings in this case, which, for the reasons above stated, do not appear to me to be conclusive, and I transmit this case for the decision of the superior Court, notwithstanding that the officiating magistrate states his intention of reporting to me the case under Clause 2, Section 6, of Regulation XII. of 1818, as Act XXXI. of 1841 leaves me no power to alter the sentence of the officiating magistrate except in appeal, and this case has not been appealed to me.

From the officiating magistrate to the officiating sessions judge of Moorshedabad No. 764, dated 29th August, 1856.

I have the honor to acknowledge the receipt of your letter No. 175, of this day's date, and in reply to inform you that as the prisoner therein referred to had made his escape from the *hajut tujweej* jail *after* he had been committed to the sessions court, I conceived that Construction No. 1246, was applicable to his case, and it was my intention, if you had not previously sent for the record, to have reported the case to you in accordance with Section 6, Clause 2, Regulation XII. of 1818.

Resolution of the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) No. 860, dated 30th September, 1856.

The Court concur with the officiating sessions judge that the sentence passed upon the prisoner should have been that which is authorised by Clause 2, Section V. Regulation XII. 1818, as his committal for trial did not bring him within Clause 1, of the above Section, which clause refers to prisoners convicted after trial.

The Court accordingly quash the sentence passed by the officiating magistrate on the 5th July last, and direct that he pass one conformably to law.

PRESENT:
H. T. RAIKES, ESQ., *Judge.*

GOVERNMENT AND MAHOMED ANEES
versus
MAHOMED SOLEEM (No. 2.)

Sylhet.
1856.
October 1.
Case of MAHOMED SOLEEM.
Appeal rejected.

CRIME CHARGED.—Wilful murder of Baseer Mahomed.
CRIME ESTABLISHED.—Culpable homicide.
Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.
Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 9th July, 1856.

Remarks by the officiating sessions judge.—The prosecutor, on the 1st of July, 1856, corresponding with 19th Assar, 1263, B. S., deposed at the thannah of Parcool, that on the 17th of Assar, he and his father (the deceased) went to a field called *taltala*, to the south of their house, with the intention of sowing paddy; that on the day *previous* to the occurrence, the prisoner and the deceased had a dispute on account of an embankment (*ayle*,) and on the day following, when he (the prosecutor) and his father were engaged in bunding the field, the prisoner came and challenged the deceased, and used abusive language; the deceased commenced repairing the *ayle*, and the prisoner struck him (the deceased) four or five blows with a bamboo *lattee* he had in his hand, and felled him to the ground; that he (the prosecutor) assisted by others carried his father (the deceased) to his house, and during the night he died from the effects of the blows he had received from the prisoner.

The prisoner before the police denies having killed the deceased, but admits that on the day previous to the occurrence, the deceased had removed an *ayle* on his (prisoner's) land, and constructed a new one; that on the day on which the occurrence took place, as he, the prisoner, was removing the new *ayle*, the deceased struck the prisoner with a *panjun* (a small bamboo stick used in driving cattle) upon his head, and wounded him, on which he, the prisoner, became angry, and struck the deceased a blow on his thigh with the *lattee*, produced in court and recognized by the prisoner, who heard on the following day that the deceased had died of cholera.

Before the magistrate, the prisoner corroborates the statement he made to the police.

The civil surgeon deposed that the marks of wounds visible on the deceased's body were sufficient to have caused the death of the deceased.

1856.

October 1.

Case of MAHOMED SOLEEM.

The confessions of the prisoner before the police and the magistrate were verified before this court by the subscribing witnesses thereto; the eye-witnesses Nos. 1 and 2 clearly prove the fact that there had been a dispute between the prisoner and the deceased, regarding an *ayle;* that they afterwards quarrelled and fought, and that the prisoner with a bamboo *lattee,* which he had in his hand, struck the deceased on the stomach and head and stunned him and felled him to the ground, and that the deceased died during the night from the effects of the beating he had received from the prisoner. The tenor of the civil surgeon's deposition, the confessions of the prisoner, and the evidence for the prosecution, clearly prove that the deceased met with his death owing to the maltreatment he had received from prisoner, but as there does not appear to have been any premeditation on the prisoner's part, who acted on the impulse of the moment, I, in concurrence with the verdict of the jury, convict the prisoner of culpable homicide, and sentence him as noted below.

Sentence passed by the lower court.—To be imprisoned for seven years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner states in his petition that he was first assaulted by deceased's party and struck senseless to the ground, and that he only dealt deceased a blow on the leg, in order to effect his own escape, and save his life. The medical evidence, however, shows that the injury received by the deceased, and which caused his death, was a severe fracture of the skull, such as the eye-witnesses describe the deceased to have received from the blow dealt him by the prisoner, and that, in every respect, the deceased was a healthy man.

As the prisoner has cited no witnesses, the evidence for the prosecution stands uncontradicted, and I see no reason to doubt the propriety of the conviction. The appeal is rejected.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND RAMCHURN RAI
versus.
BHUGWAN TEWARRY (No. 8.)

Sarun.

1856.

October 1.

Case of BHUGWAN TEWARRY.

A prisoner found guilty of aggravated culpable homicide and sentenced to imprisonment for twenty-one years with labor and irons.

CRIME CHARGED.—Wilful murder of Ramnarain Rai.

Committing Officer.—Mr. W. F. McDonell, magistrate of Sarun.

Tried before Mr. H. Atherton, sessions judge of Sarun, on the 6th September, 1856.

Remarks by the sessions judge.—This case has arisen from a trespass on the part of Callychurn, the brother of the prisoner, on the field of the deceased, Ramnarain Rai. Callychurn went to get grass in Ramnarain's field; a dispute took place between the two which was stopped by Lukhoo and Auchaibur, witnesses Nos. 1 and 2, when the prisoner came up from his house, at a short distance from the field, and struck the deceased so severe a blow on the head with his *lattee* that he fell senseless and died the next morning; the evidence of the civil surgeon showing that death resulted from the fracture of the skull caused by the blow. The assault was witnessed by the witnesses Nos. 1, 2, 3, 4 and 5, as per margin, and the prisoner admits having come to blows with the deceased, though he says the blow aimed by him at the deceased was parried. As the assault was quite unprovoked, I consider the prisoner liable to a heavier sentence than I can award for the crime of which he is convicted, and I therefore recommend that he be sentenced to fourteen (14) years' imprisonment with labor in irons.

No 1, Auchaibur.
" 2, Lukhoo.

No. 9, Dr. Fleming.

No. 1, Auchaibur.
" 2, Lukhoo.
" 3, Dirgopal.
" 4, Cheerkoot.
" 5, Ramdour.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The evidence of the eye-witnesses in this case shows clearly that a squabble arose on the date in question, between the brother of the prisoner and the deceased, and that the prisoner at that time came from his house armed with a club, and struck the deceased a blow on the head, from the effect of which, he died the following morning.

It does not appear from the evidence that the deceased was armed, neither does any provocation seem to have been directly given to the prisoner by the deceased, though doubtless, he was enraged with the deceased for squabbling with his brother.

1856. October 1. Case of BHUGWAN TEWARRY.

The prisoner, in his defence, acknowledges having aimed his club at the deceased, but adds that the deceased parried it, and that he knows not on what place he struck the deceased or whether the deceased died from the effect of the blow or not. Under all the circumstances of the case, we find the prisoner guilty of aggravated culpable homicide, and sentence to twenty-one years' imprisonment with labor and irons.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND SHEIKH BAHADOOR

versus

AZUB KHAN (NO. 4, APPELLANT,) MOOLUKRAM DOSS ALIAS MOOLIE DOSS (NO. 5,*) JOOGULRAM DEB (NO. 6,*) AND SOOBIDRAM BISHO (NO. 7.*)

Sylhet. 1856. October 1. Case of AZUB KHAN and others.

Appeal rejected as the crime for which the prisoner was sentenced was clearly proved against him.

CRIME CHARGED.—Wounding Sheikh Bahadoor, with intent to kill.

CRIME ESTABLISHED.—Severely wounding.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 11th June, 1856.

Remarks by the officiating sessions judge.—The prosecutor, Sheikh Bahadoor, on the night of the 17th February, (6th Falgoon, B. S.,) having been admitted into the hospital, deposed that, on that very day about noon, he was assaulted and wounded by Azub Allee and others in a field.

The darogah, after holding an investigation, reported the charge proved, and that Azub Khan, (prisoner No. 4,) Adil Khan and Moolie Doss, (prisoner No. 5,) had assaulted and wounded the prosecutor and that Joogulram, (prisoner No. 6,) and Soobidram, (No. 7,) had ordered the assault, &c. In this case, the prisoner No. 4, Azub Khan, was ploughing in the prosecutor Bahadoor's land, and prisoners Nos. 6 and 7, were present. The prosecutor came to the place and on his forbidding Azub Khan, (prisoner No. 4,) to plough, the latter, being ordered by the prisoners Nos. 6 and 7, assaulted the prosecutor and wounded him very severely with a *lattee*. The magistrate finding the charge not proved against Adil Khan, released him

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* Acquitted by the sessions judge.

and committed the remaining prisoners to take their trial before the sessions court.

1856.

October 1.

Case of AZUB KHAN and others.

The evidence of the eye-witnesses satisfactorily proves the charge of severely wounding, against prisoner No. 4, which is also borne out by the deposition of the civil surgeon before this court; but there is no evidence to prove that the prisoner wounded the prosecutor with intent to kill him.

Before the magistrate, the prisoner pleaded that he merely went to the spot where the occurrence took place and then saw the prosecutor in a wounded state. Before this court the prisoner pleaded *not guilty* and stated that he did not go to the spot. He cited no witnesses in his defence. The prisoner's statement contradicts his previous statement before the magistrate and which has been verified by the subscribing witnesses thereto, before this court. In concurrence with the assessors' verdict, I convict the prisoner No. 4, and acquit prisoners Nos. 5, 6 and 7, for want of proof and sentence prisoner No. 4, as follows:

Sentence passed by the lower court.—No. 4, to be imprisoned without irons for three years and to pay a fine of Rs. fifty (50,) on or before the 21st instant, or, in default of payment, to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) We see no ground for interfering with the orders of the sessions judge. Prisoner was named from the first as the party by whom prosecutor was wounded; and the crime is clearly proved against him.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT AND MUSST. PUTHISSIAH

versus

BISSESSUR SINGH (No. 2.)

Tirhoot.

1856.

October 1.

Case of BISSESSUR SINGH.

The sentence passed upon the prisoner convicted of culpable homicide was affirmed on appeal.

CRIME CHARGED.—Wilful murder of Tiluckdhary Dhanook, deceased.

CRIME ESTABLISHED.—Culpable homicide of Tiluckdhary Dhanook, deceased.

Committing Officer.—Mr. H. Richardson, magistrate of Tirhoot.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 7th June, 1856.

Remarks by the sessions judge.—In consequence of a bullock of the prisoner having strayed into the field of one Gholamee

1856.

October 1.

Case of BISSESSUR SINGH.

Singh, the master of the deceased, the latter abused the cowherd, on which the prisoner fell upon the deceased and struck him with his fists and kicked him, from the effects of which he died on the spot, no bad feeling having before existed between the parties. The prisoner (as well as two others acquitted) were named by the witnesses Nos. 1, 2 and 3, but as these were material discrepancies between their statements in the mofussil and in the foujdary and this court, their testimony was not trustworthy or conclusive. The charge is, however, fully brought home to the prisoner by the evidence of two other witnesses Nos. 4 and 5, who, bathing in a rivulet close by, were attracted by the uproar, and coming up, saw the prisoner in the act of beating the deceased, their story being consistent throughout.

The medical officer, who examined the body, deposed that death was evidently the result of internal hemorrhage from the ruptured spleen, and had probably been caused by blows or kicks; at all events must have been caused by external violence of some kind.

The prisoner, who all along pleaded *not guilty*, set up *alibi* in his defence, but as that was not satisfactorily substantiated, and the criminating proof against him was clear and sufficient, I have, in concurrence with the law officer's convicting *futwa*, found him guilty of the culpable homicide of the deceased and sentenced him as shewn below.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with the conviction and sentence passed upon the prisoner, and reject his appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

SATCOWREE DOMINI.

East-Burdwan.

1856.

October 1.

Case of SATCOWREE DOMINI.

The prisoner was acquitted as there was nothing improbable in her defence that she abandoned her child believing it to be dead.

CRIME CHARGED.—Wilful attempt to murder her new born female child.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 18th September, 1856.

Remarks by the officiating sessions judge.—The prisoner was first committed on a charge of exposing a new born child with intent to destroy it. In accordance with the Court's circular of the 14th of November, 1851, I directed a re-commitment on a charge of attempt at wilful murder.

The facts of the case are these: Early on the morning of the 30th July, Toolshi Bewa,* saw two or three persons standing in the dry bed of the river Banka, attracted by the cries of a child buried in sand with only the face exposed. On removing the sand, it proved to be a new born female child, Toolshi carried it to her home, and preserved its life.

* Witness No. 5.

In the mean time, notice having been given to the darogah, enquiry was made and suspicion falling on the prisoner, she was apprehended* near a tank in Nilpore, at a distance of about a mile from the place where the child was found.

* Witnesses Nos. 1 and 2.

She confessed before the darogah, that being overtaken with the pangs of labour while passing near the Banka, she was on the previous evening delivered of a child, and that believing it to be dead, she buried it in the sand. She repeated this confession both before the mgistrate and in this court.

It appears* that she had cohabited with Boirah Bowrie, who died several months ago.

* Prisoner's confession Witnesses Nos. 1 and 2.

The prisoner urges in her defence that if she had wished to destroy her child, she would have procured an abortion before she had been far gone in pregnancy.

The law officer acquits the prisoner.

The fact of the prisoner burying the child affords a strong presumption that she did not believe it was dead. All the probabilities of the case tend to show that the child was born alive. Had it not been strong and healthy, it could not have

1856.

October 1.

Case of SATCOWREE DOMINI.

survived the treatment it experienced. In the summing up of the judge quoted at page 488, of Russel on Crimes, it is laid down that "if a party so conduct himself with regard to a human being which is helpless and unable to provide for itself as must necessarily lead to its death, the crime amounts to murder," and further, it will be necessary "to consider whether the prisoner left the child in such a situation that to all reasonable apprehension, she must have been aware that the child must die, or whether there were circumstances that would raise a reasonable expecta'ion that the child would be found by some one else, and preserved, because then it would only be the crime of manslaughter."

There is no path along the bed of the river, but it is frequented by the inhabitants of the town for the purpose of relieving nature. Had the prisoner reasoned with intelligence, she might have calculated that the child would not remain undetec'ed. But on the other hand, it is very likely she may have thought that the bed of the river, afforded the best means of concealment available to her.

Admitting what may be fairly doubted, that the prisoner did not intend to kill the child by burying it, yet it must be concluded that the circumstances of time, place and season precluded any reasonable expectation that the child would be preserved.

Being of opinion that the charge has been fully proved, I would recommend that the pri oner be imprisoned for life.

The humanity and proper feeling evinced by Toolshi Bewa, and the measures she took for the preservation of the child, are very commendable.

The magistrate omitted to record the statement of the prisoner in the manner confessions are recorded; and to prove it, I was obliged to send for the mohurrir, who took it down. I have called the magistrate's attention to the omission.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We do not think there is anything improbable in the prisoner's defence, that she believed the child to be dead, when she abandoned it. Similar cases have occurred. See case of Musst. Joonee, page 969, of Nizamut Decisions for 1853, Par' II. Volume III. We acquit the prisoner and direct her release.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND PURMESSUR GHOSE

versus

JUGGESHUR DUTT, (No. 2,) RESUL TEWAREE, (No. 3,) AND KISHTO BAGDI, (No. 4.)

East-Burdwan.

1856.

October 1.

Case of JUGGESHUR DUTT and others.

The prisoners were acquitted. The facts of forgery and perjury not being proved, nor any injury from the alleged forgery shewn.

CRIME CHARGED.—Prisoner No. 2, forging a *mookhtearnamah* in his own and Lallgopall Sircar's name, bearing the counterfeit signature of the late Ajeejur Ruhuma, and knowingly causing the same to be uttered, and filed in the court of the officiating magistrate of East-Burdwan; second, subornation of perjury in introducing the prisoners Nos. 3 and 4, who were the witnesses to the above *mookhtearnamah* to Lallgopal Sircar, prisoner No. 1, and instructing him to produce them before the officiating magistrate of Burdwan, for the purpose of attesting the *mookhtearnamah* aforesaid, and causing them so to attest the *mookhtearnamah* aforesaid under a solemn declaration taken instead of an oath before the officiating magistrate of East-Burdwan, and swear that Ajeejur Ruhuma, signed the *mookhtearnamah*. Such deposition being false, and having been intentionally and deliberately caused to be made by the prisoner.

Prisoners Nos. 3 and 4, perjury in having on the 17th April, 1855, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of zillah East-Burdwan, that Ajeejur Ruhuma, signed the *mookhtearnamah*, aforesaid whereas the said Ajeejur Ruhuma, died on the 8th April, 1855, (27th Choitro, 1261, B. S.) in the village of Baggah, in zillah Rajshahye, six days previous to the date on which the *mookhtearnamah* aforesaid is said to have been given. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Prisoner No. 2, convicted first of the crime, described in Clause 2, Section 10, Regulation XVII. of 1817, viz., attempting to give effect to a fabricated *mookhtearnamah* knowing the same to be false and fabricated, and secondly of subornation of perjury.

Prisoners Nos. 3 and 4, perjury.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of zillah East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of zillah East-Burdwan, on the 28th July, 1856.

Remarks by the officiating sessions judge.—This case first came before the additional sessions judge, who quashed the pro-

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October 1.

Case of JUGGESHUR DUTT and others.

ceedings and directed the release of the prisoners, but eventually it was re-committed in accordance with the instructions of the Sudder Nizamut Adawlut.

Prisoner No. 1, of case No. 6, of statement No. 8, presented a petition to the magistrate purporting to be a complaint from Ajeejur Ruhuma, against Moonshee Kareemoodeen, after having caused the attestation of a *mookhtearnamah* purporting to have been executed by Ajeejur Ruhuma, in his, prisoner No. 1's favor and in favor of prisoner No. 2. Prisoners No. 3 and 4, swore to the execution of the *mookhtearnamah.*

It was afterwards discovered that Ajeejur Ruhuma had died before the alleged execution of the *mookhtearnamah.*

An enquiry was instituted, and prisoner No. 1, stated that prisoner No. 2, had brought the petition and *mookhtearnamah* to him and had assured him that the latter had been executed by Ajeejur Ruhuma, and that prisoners Nos. 3 and 4, then present were the attesting witnesses.

Prisoner No 2 absconded and was not apprehended for a considerable time.

It has been proved that prisoner No. 2, used to be employed as the mookhtear of Ajeejur Ruhuma, and that some time before the present case, a *mookhtearnamah* had been granted to him by Ajeejur Ruhuma, in another case against Moonshee Koreemooddeen.

It appears that in the course of six months, prisoner No. 3 attested fifty-three *mookhtearnamahs* before the magistrate, and prisoner No. 4 attested thirty-five.

Prisoner No. 2, professes to know nothing of the matter, he states that he had a quarrel with prisoner No. 1, in Chyt, 1261, B. S., and that that quarrel has led to the present charge; five witnesses have deposed that they were present at that quarrel.

Prisoners Nos. 3 and 4, stated that prisoner No. 2, produced a man before them who said he was Ajeejur Ruhuma. They have cited no witnesses in their defence.

The jury convict prisoners Nos. 2, 3 and 4.

The case is clear against prisoner No. 2. He was evidently the principal mover in the case. His defence is absurd. It is not conceivable that prisoner No. 1, should have contrived the fraud with a view of venting his enmity against prisoner No. 2.

It is very evident that prisoners Nos. 3 and 4, made a trade of attesting *mookhtearnamahs*, and that in this case they deliberately deposed to what was untrue.

I convict prisoner No. 2, first of the crime described in Clause 2, Section 10, Regulation XVII. of 1817, viz. attempting to give effect to a fabricated *mookhtearnamah* knowing the same to be false and fabricated; secondly of subornation of perjury;

and prisoners Nos. 3 and 4, of perjury, and I sentence prisoner No. 2, to six (6) years' imprisonment with labor in irons and prisoners Nos. 3 and 4, to five (5) years' imprisonment with labor in irons.

1856.

October 1.

Case of JUGGESHUR DUTT and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We observe that prisoner No. 2, is convicted of uttering a forged *mookhtearnamah* and suborning witnesses in attestation of it. Prisoners Nos. 3 and 4, are convicted of perjury. Regulation II. 1807, requires that forgery to be penal, must be fraudulent and injurious.

It has not been shewn in the present case that the deed is a forgery or that injury has been the result of uttering the deed; so that prisoner No. 2, cannot be convicted of uttering an alleged forged paper, from which injury has not followed. Nor can prisoners Nos. 3 and 4, be convicted of perjury; as they only deposed to the signature being that of Ajeejur Ruhuma. They did not depose to his signing in their presence; nor is there any proof on the record that the signature was not his. It is inferred only that it is not his from his death; but he might have died subsequently to signing. The conviction of subornation of perjury must of course fall with that of perjury. We acquit all these prisoners and direct their release.

These two cases, although originating out of one matter, should have been made separate commitments. For the charge of forgery could be prosecuted by the plaintiff at his option, while the public officer, before whom the alleged perjury took place, could alone institute proceedings for it.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, Esqs.,
Officiating Judges.

GOVERNMENT
versus
GOOROOCHURN MAJHEE.

West-Burdwan.

1856.

October 2.

Case of GOOROOCHURN MAJHEE.

Return from transportation. Prisoner con-

CRIME CHARGED.—Having escaped, on the 1st July, 1855, from transportation beyond sea for life at Moulmein, whither he was transported after having been sentenced by the Nizamut Adawlut, to be imprisoned for life beyond sea, on conviction of having, in his possession, a portion of plundered property acquired by dacoity, knowing it to be such, and belonging to a gang of dacoits.

Committing Officer.—Mr. H. Rose, officiating joint-magistrate of Bancoorah.

1856.

October 2.

Case of GOOROO-CHURN MAJHEE.

Tried before Mr. Pierce Taylor, sessions judge of West-Burdwan, on the 8th September, 1856.

Remarks by the sessions judge.—The prisoner pleaded *guilty*, and there could be no doubt, from the evidence of Poonapa Peadah of the Moulmein jail, witness No. 7, the letter and roll of Capt. Haughton, the marks of *godna* on his forehead, and the depositions of recognition, given by the witnesses, Sheikh Asseeruddeen, jemadar, Sheikh Kurrim Duffadar and Khyroollah Khan, burkundaz, Nos. 8, 9 and 10, that he escaped from the above place on the 1st of July, 1855, and that he was the veritable Gooroo Majhee, once so infamous in this district for his manifold crimes, and so notorious for breaking jail. From the account of his escape, given by Poonapa Peadah, it would appear that the burkundaz, who was in charge of him and another convict, who made off at the same time, but was recaptured, must have connived at his evasion. He pretended that he floated over to Bengal on a piece of wood or a fish, but I have little doubt of his having concealed himself in some ship, and thus obtained a free passage to Calcutta, and that he must have been in Bishenpore for a considerable time before he was sent in. The chowkeedars, Purmanund Matiah and others, witnesses Nos. 1, 2, 3 and 4, averred that they had captured him by force, and the officiating joint-magistrate has recommended that a reward of 100 Rs. be given to them, in consequence, but I am unable to support his recommendation, for the following reasons.

[Convicted and declared liable to a capital sentence: but sentence remitted in accordance with the precedent in the case of Mahomed Kamil (January 6th 1853) and prisoner re-transported.]

1st.—A *beynamee* petition was placed on my desk, some time before the trial, which declared that the darogah and his subordinates had long been aware of the return of Gooroo Majhee to Bishenpore, and that he was only sent in, at last, because some one had found out that the darogah was conniving at his being at large and was preparing to inform the officiating joint-magistrate of his conduct. On my sending this document to that officer, he, it appears, made certain enquiries which resulted in the removal of the darogah to another thannah.

2nd.—The chowkeedars, Purmanund and Nuffer, witnesses Nos. 1 and 2, stated that when the darogah asked them whether they had heard of the convict's return, they said that they had, but had not seen him, yet they succeeded in capturing him, on the alleged information of the chowkeedar Khettoo, witness No. 3, the very next day.

3rd.—Their accounts of the so-called capture were discrepant and evidently invented for their own glorification and with an eye to reward, and,

4th.—The prisoner declared that he had been merely sent for, and that when the chowkeedars were on their way to the thannah with him, other police officers joined them with the

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October 2.

Case of GOOROO-CHURN MAJHEE.

weapons, &c., who, when asked why they did so, acknowledged that it was with a view to reward.

The long detail of crimes committed by the prisoner and of his escapes from jail given in the officiating joint-magistrate's abstract, shew that he is a most dangerous and slippery character, but I do not conceive that I can recommend his capital punishment, under Clause 2, Section 9, Regulation LIII. of 1803, partly because there is no precedent for such a course, and partly because, though he has been tried for attempt to murder, the crime was not proven against him, and his other offences were of a less heinous nature. Long before his escape, I had occasion (in the case of the murder of Sheebbux Singh, printed among the Nizamut Decisions of June, 1852,) to examine the above case of attempted murder, and other papers, which shewed that the Bishenpore family, had been suspected of employing and harboring Gooroo Majhee, and the place in which he was last found, viz., a garden close to the Rajah's *killah*, goes far to confirm that suspicion.

In conclusion, I beg to recommend that the prisoner be re-transported, and that measures be taken for having him conveyed to a more distant colony than Moulmein, or we shall be having him back again shortly.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoner, who is a life-convict, made his escape from the Moulmein jail, in July, 1855, and has returned to this country. He has therefore rendered himself liable to a sentence of death. As his escape, however, was unattended by violence or other aggravating circumstances, we consider ourselves justified, under the precedent established in the case of Mahomed Kamil, (January 6th, 1853,) in remitting the penalty which he has incurred. It is unnecessary to pass any fresh sentence. The prisoner will be made over to the proper authorities with his original warrant, or a duly authenticated copy thereof, and will be re-transported to a penal settlement.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT AND MUDAR BUKSH

versus

SHEO DOSADH.

Tirhoot.

1856.

October 2.

Case of SHEO DOSADH.

Appeal rejected.

CRIME CHARGED.—1st count, burglary and theft of property valued at 102 Rs.; 2nd count, knowingly receiving and being in possession of part of the above stolen property valued at Rs. 43-8.

CRIME ESTABLISHED.—Knowingly receiving and being in possession of stolen property valued at Rs. 43-8.

Committing Officer.—Mr. H. C. Raikes, joint-magistrate of Champarun.

Tried before Mr. R. Forbes, sessions judge of Tirhoot, on the 23rd June, 1856.

Remarks by the sessions judge.—In February last, the additional judge Mr. G. L. Martin, then officiating as sessions judge, was proceeding to hold sessions at Moteeharee, and on the 11th of that month, his camp was pitched at mouzah Munneechuprah, where he halted for the night. Nothing having transpired during the night, it was ascertained early next morning that the *saychbhan* or outer *purdah* of the tent, in which Mr. and Mrs. Martin had slept had been cut open and that a *pitarah* containing wearing apparel, a lady's work-box and another tin box, also containing articles of clothing, had been carried off, and on a search being made round about the encampment, both the *pitarah* and tin box were found at no great distance from the camp, the contents of which, though both had been forced open, had not been abstracted. Two silver spoons too which lay on a table in the tent were carried off and have not been recovered, the estimated value of the property stolen being 102 Rs. of which articles to the value of 85 Rs. have been recovered.

The prisoner, a Gorait of the village, with a chowkeedar, (acquitted) having been stationed to watch the tent on the side on which the burglarious entry had been effected, suspicion fell upon him, and on the darogah's arriving to investigate the case, the prisoner after some coaxing voluntarily pointed out, and in the presence of witnesses Nos. 1, 2, 3, 4, 5 and 6 produced out of his field, where it had been covered over with ashes, the missing work-box, the lock of which had been forced and the bottom broken, though the contents were not entirely abstracted. The prisoner having also informed the darogah that more of the stolen property was in the house of one Sookeen Chain, it was

searched and a gold ring and other articles valued at Rs. 41-8, were found therein, Sookeen himself, however, not having been apprehended, the articles thus recovered being duly identified.

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Case of SHEO DOSADH.

The prisoner all along pleaded *not guilty*, but he has no satisfactory defence nor exculpating witnesses to call, and as his voluntary pointing out the identified articles which he produced, as well as his informing the darogah of the property in another's house was satisfactorily and conclusively established by the evidence of the witnesses before whom he did so, I concurred with the *futwa* of the law officer which, convicting the prisoner on the second count charged in the indictment, declares him liable to discretionary punishment by *tazeer* and I have sentenced the prisoner as shewn below.

Sentence passed by the lower court.—To be imprisoned for the period of five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The charge against the prisoner is clearly proved, and we see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

RAMKOOMAR PANCHASSA.

Hooghly.

1856.

October 2.

Case of RAMKOOMAR PANCHASSA.

CRIME CHARGED.—1st count. dacoity with murder on the night of the 30th January, 1854, in the house of Ramjeebun and Khettermohun Neogee, of Hodulpara, thannah Selamabad, zillah Burdwan; 2nd count, dacoity on the night of the 3rd February, 1854, in the house of Maheem Mundul of Hajeepore, thannah Dhuniakhally, zillah Hooghly; 3rd count, dacoity on the night of the 5th July, 1854, in the house of Bungsee Doss Kassaree of Khanpore, thannah Dhuniakhally, zillah Hooghly; 4th count, having belonged to a gang of dacoits.

The prisoner, a professional dacoit, transported. Commissioner instructed to send up in future commitments, all records, having a bearing on a prisoner's case.

Committing Officer.—Baboo Chunder Sekhur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 15th September, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with three specific dacoities and with having belonged to a gang of dacoits. The first dacoity was at Hodulpara, on

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October 2.

Case of RAMKOOMAR PANCHASSA.

the night of the 30th January, 1854, and was aggravated by the murder of the village chowkeedar. One person has been already tried, convicted and transported for life for this dacoity, Baranussee Bagdee.* The two approver witnesses confessed to having been engaged in this dacoity on the 3rd and 14th May last, respectively, when they both denounced the prisoner as associated with them in the affair; and they have made the same statement again before me to-day on oath in the presence of the accused; but on their evidence alone, the prisoner cannot, I think, be convicted on *this* count, for their confessions were made six weeks *after* the prisoner was arrested, and was in the hands of the officer to whom they (the approvers) confessed. In support too of their direct evidence, we have but one item of corroboration, the confession of Jadoo Haree, a transported convict, recorded in the dacoity office on 28th July, 1855. In that confession he implicated the prisoner and the approver Nuffur, but not Rajoo Haree. The approvers give the details of the dacoity pretty well as they did before, but Rajoo Haree not very accurately as to either the persons engaged or the incidents.

In the second dacoity at Hajeepore, on the night of the 3rd February, 1854, we have again the *expost facto* denunciation of the two approver witnesses, and the previous confession of Jadoo Haree, recorded on the 29th July, 1855, in which he denounced as his accomplices in the affair again the prisoner and the approver Nuffur only. There is no further evidence direct or circumstantial on this count, and on *it* too the prisoner must, in my opinion, be acquitted. The approver witnesses somewhat contradict their previous statements as to the names of the parties concerned, but are consistent enough in their account of the incidents.

On the third count, the evidence seems to me sufficient for conviction, viz., the Khanpore dacoity charge. This crime was committed on 5th July, 1854. On 7th July, 1854, one Dino Haree, who had been arrested in the act, confessed to having joined in it and declared the prisoner, Jadoo Haree, and both the approvers had done so too. This confession he subsequently repeated to the magistrate, and he was ultimately sentenced to seven years' imprisonment. The papers are not forthcoming, but in all probability this Dino Haree denied his guilt in the sessions court; and, whether he did or not, would not, had he been produced, have again testified against his associates. On 29th July, 1855, Jadoo Haree, now a convict in transportation was arrested and confessed to this dacoity, when he denounced the prisoner *and both the present approvers*. On the 21st March, 1856, the prisoner was arrested on this amongst other charges,

* Sudder Nizamut Adawlut, 26th May, 1856.

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October 2.

Case of RAMCOOMAR PANCHASSA.

and denied his guilt. Subsequently two more denounced by Jadoo Haree, were arrested and confessed on the 2nd and 14th May last, respectively, the two approver witnesses named in the calendar. They both at once confessed to this dacoity naming the prisoner and each other. Now, before me, they repeat their previous statements with very sufficient accuracy, and one at least (beyond every thing of importance to my mind) imparts into his statement no fresh names. I consider the crime charged in this count to be fully made out against the prisoner, as also the general charge of having belonged to a gang of dacoits. He appears by the evidence of the approver witnesses to have been an active member of the gangs headed by Baranussee, Ishwur, and Jadoo Haree, or Kangalee Sirdar.

The prisoner states in his defence that the two approver witnesses are unfriendly to him; that he has committed adultery with the approver witness Rajoo's wife, (a poor piece of spite probably, but which if true would I think prove association with a dacoit's family ;) and that Nuffur had quarrelled with him about some rent. But he, in no way, explains why Jadoo Haree originally denounced him and caused him to be arrested, and he cites evidence to character only. His witnesses, two in number, declare he is *a man of bad repute* and an associate of thieves.

I beg to recommend that the prisoner be sentenced to transportation for life with hard labor and irons on the third and fourth counts of the calendar.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) The testimony of the approver witnesses taken in connection with the confessions of Jadoo Haree, implicating the prisoner in the dacoities at Hodulpara, Hajeepore, and Khanpore, and especially with the confession of Dino Haree, who was arrested in the commission of the dacoity at Khanpore, leave no doubt upon our minds of the prisoner having belonged to a gang of dacoits; and we therefore convict him on this charge, and sentence him, as recommended by the sessions judge, to transportation for life with labor and irons.

We observe that the record of the case of Government *versus* Baranussee Dooly Bagdee, in which *two* approver witnesses were examined regarding the dacoity at Hodulpara, has not been sent up with the other papers. This record would have shewn whether both the approvers implicated the prisoner Ramkoomar Panchassa in that dacoity. Such corroborative evidence would have strengthened the case for the prosecution. The sessions judge will direct the dacoity commissioner to submit in future every record in any way affecting a prisoner committed to the sessions, whether such record have a bearing in favor of or against the prisoner.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

SUKHA MUSSULMAN.

Hooghly.

1856.

October 3.

Case of SUKHA MUSSULMAN.

Belonging to a gang of dacoits. Conviction affirmed. Practice of dacoity commissioner in detaining persons arrested on charges of dacoity for long periods without putting them on their trial and in neglecting the ordinary rules of criminal procedure, reprobated by the Court. System of retaining all approvers together in one building also condemned as tending to affect the value of their evidence.

CRIME CHARGED.—1st count, dacoity on the night of the 20th February, 1847, in the house of Moulvee Ekramul Huk of Chowghurria, thannah Umbeeka, zillah Burdwan; 2nd count, dacoity on the night of the 25th December, 1848, in the house of Rajmohun Chuckerbutty of Nukfool, thannah Bagdah, zillah Nuddeah; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chundersekhur Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 15th September, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with two specific dacoities and with having belonged to a gang of dacoits, and in the lower court he freely and voluntarily admitted he had been engaged in these two and in five other dacoities which he named, but the particulars of which he was not required to disclose. The prisoner is excessively deaf, but can be made to hear what is said to him.

Both the approver witnesses entered in the calendar were concerned in the dacoity at Chowghurria, on the night of the 20th February, 1847, and both implicated the prisoner in their confessions recorded on the 28th April, and 28th November, 1854, respectively. To-day they re-affirm on oath the prisoner's complicity in the affair, and they again describe the circumstances as at first. For this dacoity, several persons have been already brought to trial and punished.

In addition to the above direct consistent testimony we have to connect the prisoner with this Chowghurria dacoity, as follows: One Babooram Bagdee, on his arrest confessed to having been engaged in this dacoity within eight days of its commission, when he named as his accomplices the prisoner and both approver witnesses. Two more did the same, Adar Bagdee and Bishoonath, under the same circumstances, and within seven days of the occurrence, and *their* confessions implicated the prisoner and one of the two approver witnesses, Nobin. Before the magistrate, though all these three persons repeated their admissions, but one of them, Bishoonath, again named the pri-

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soner. The statements before the magistrate bear date the 1st and 2nd March, 1847.

Both the approvers too confessed to the Nukfool dacoity on the 25th December, 1854, but only the witness Nobin, in his original confession, implicated the prisoner. That the second approver should now name the prisoner for the first time is only a proof how much approver-evidence requiries support and corroboration. Both approvers describe all the incident of the affair now as before; and for this dacoity, a number of persons have been already brought to trial and finally convicted.

The approver Nobin declares the prisoner was a member of a gang jointly led by him and his fellow-approver; and Devee himself confirms this statement. Before the deputy magistrate under the commissioner for the suppression of dacoity the prisoner said the same.

I consider it clearly made out that prisoner, Sukha Mussulman, has belonged to a gang of dacoits, and I beg to recommend that he be sentenced to transportation for life with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) The prisoner has confessed with a view of becoming an approver, and his confession is amply corroborated by independent evidence. We therefore convict and sentence him as proposed by the additional sessions judge.

We observe that the prisoner in this case, was apprehended and committed to jail on the 1st June, 1856, but that he was not called upon to answer the charge against him until the 12th August. In another case which has been before us to-day, from the same office, the prisoner was apprehended on the 21st March, but was not put on his defence until the 30th July; and we understand from the mohurrir of the dacoity commissioner's office, who is in attendance with the records, that it is the practice of the department to retain persons, accused of dacoity, in jail, without putting them upon their trial until they either confess, or their cases are otherwise ready for committal to the sessions.

Such a practice, if it exists, cannot be too strongly reprobated; but we are unwilling to believe without further evidence that the mohurrir's statement is correct. We therefore direct that a copy of these remarks be furnished to the dacoity commissioner; and that he be called upon to furnish without delay such explanation* with regard to this matter as he may wish to submit.

* From the officiating sessions judge of Hooghly, to the officiating Register of the Nizamut Adawlut, No. 380, dated 8th November, 1856.

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We observe also that, although the prisoner in this case has confessed to seven dacoities, and it is, we conclude, the intention of the dacoity commissioner to employ him as an approver, he was only examined as to the particulars of two of

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With reference to the remarks of the presiding judges of the court on the trial of Sukha Mussulman, held on the 3rd October last, I have the honor to submit for the consideration and orders of the court, copy of a letter from the committing officer, Mr. J. B. Ward, dacoity commissioner under date the 3rd instant, No. 509.

From the dacoity commissioner to the officiating sessions judge of Hooghly, No. 509, dated 3rd November, 1856.

With reference to the remarks recorded by the judges presiding in the sudder Court on the trial of Sukha Mussulman, held on the 3rd October last, I have, as directed by the Court, to submit the following explanation regarding the delay which took place in committing that prisoner and another Ramcoomar Panchasa, who was tried the same day.

The delay in putting Sukha Mussulman, on his trial was owing to the indisposition of my deputy magistrate, who was under the civil surgeon's treatment for about a fortnight in June, and during the whole of July, and quite unable to attend to his duties.

As regards Ramcoomar Panchasa, the delay in committing him occurred thus, he had been arrested on the information of an approver named Jadoo Hari, but this approver escaped from my guard on the 7th April, i. e. seventeen days after the prisoner's arrest, and there was then no evidence at all to bring against him. The information we had obtained that the prisoner was a dangerous offender, was, however, so convincing that we were loath to set him at liberty, in the hope that the proceedings we had in contemplation would yet enable us to prosecute Ramcoomar to conviction, and we were not disappointed. On the 26th April, Rajoo Hari, a member of the gang to which Ramcoomar belonged was arrested and confessed, and similarly on the 12th May, Nuffur Bagdi, was taken and immediately turned approver. These men were committed on the 6th of May, and 6th of June, respectively, tried in sessions on the 28th May, and 19th June, when their cases were referred for the orders of the sudder Court, and final sentence issued on the 6th August. We could not of course make use of these two men till we knew that they would hold to their plea of guilty before the sessions judge, and from the date of Nuffur's trial to 30th of July, when Ramcoomar was committed, the deputy magistrate was, as I stated above, incapacitated by illness.

Persons taken up by this department are invariably called on for their defence on arrest, but it is true that their plea is not recorded. The reason of this is, that we are seldom able to decide at once on what charge the prisoner shall be arraigned. We ask him if he has belonged to a gang of dacoits, but under the view taken, that to establish this general count, specific acts must be proved, we must call on the prisoner to plead to each of these specific charges, and so many things may turn up, as we trace out the prisoner's life of crime (which in justice to him we review in his presence,) that we may sometimes eventually decide on sending him for trial on an indictment altogether different to that we had originally framed. For the future, however, I will endeavour to meet the views of the Court by recording the prisoner's defence to the charge of having belonged to a gang of dacoits, on arrest, leaving any further details he may wish to offer regarding any special acts to be added when the specific charges, on which he will be tried, have been decided on.

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these dacoities. Now, it is of the utmost importance that the evidence of approvers as to the whole of the robberies in which they have been concerned, should be taken down in the fullest

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The Court will observe, however, that in an office constituted as this is and working on a special system, we are frequently obliged to make arrest on very imperfect information, and on grounds which, in ordinary courts, might scarcely be considered justifiable. For instance, the first approver to a gang must be taken merely in the hope that he will confess and give us a clue on which to obtain evidence against himself and his fellows. When a man so arrested pleads *not guilty*, the Court will readily understand that to release him at once, would be effectually to do away with any hope of obtaining confessions from any of his fellows, we might subsequently arrest on the same grounds and with the same expectation and thus we are at times obliged to detain such men in custody some considerable time before we can send them for trial. This is what under the system we are working on, I cannot but consider a necessary irregularity, but I must assure the Court that no person is ever so arrested without our having first satisfied ourselves that such a person is in every truth a dacoit, a point which, it must be admitted, it is not difficult to ascertain even though it be not susceptible of legal proof. So that, while I am always anxious to keep prisoners under trial, as short a time as possible, I am not unfrequently forced to detain them longer than would seem strictly regular. The Court may rest satisfied that this subject will receive my best care and attention, and will, I trust, treat such cases with indulgence.

Having submitted the explanation required of me, I trust I may be pardoned for going on to the next paragraph in the minute recorded in this case, and remarking that it was never, at any time, intended to retain Sukha Mussulman, as an approver. This prisoner confessed only as he was about to be committed for trial, and though he said he confessed in the hope of being kept in this establishment, he was distinctly given to understand that no such hope could be hold out to him. We are very careful to take down in writing every thing a man has to say before we let him communicate with any person whatever, when it is intended to retain him as a professional informer It was not so intended in this case, but even then, the whole of his statement would have been taken, were it not that Sukha Mussulman, was very deaf, and it was so difficult to question him that his general confession and the details of two dacoities only were recorded. Very little stress was laid on this confession for the case for the prosecution was already very strong, and the fact is, that we rarely keep as approvers, men who have been any time in our custody. Generally speaking, I advise such men to hold to their plea of *not guilty*.

I have much pleasure in informing the Court that I had some time ago the honor of bringing to the notice of Government the necessity of extending this commission, so as to enable me, by having branch offices at different stations, to carry out the approver-system as was done in the Thuggee department. I have reason to believe that my proposition has been favourably received; but I have forwarded a copy of that part of the judgment in Sukha Mussulman's case, which treats of that subject, and have little doubt that the Hon'ble the Lieutenant Governor will at once act on the Court's suggestion.

***Resolution of the Nizamut Adawlut.*—(No. 1041, dated 4th December, 1856.) Present: E. A. Samuells and D. J. Money, Esq.**

The Court are happy to learn from the explanation submitted by the commissioner for the suppression of dacoity that the delay which occurred,

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possible manner before they have had any communication with the other approvers in the dacoity commissioner's office. If this is not done, all confidence in their evidence is necessarily destroyed.

It is much to be lamented that the dacoity commissioner has not the means of keeping such approvers as confess to the same dacoities at different stations, and examining them through different officers.

In the *thuggee* department, it was the practice to take every possible precaution against collusion on the part of the approvers; and this it was, which gave the judges confidence in the evidence of the *thug* approvers, and ensured convictions in these cases. When one approver was examined at Moorshedabad, another at Jubbulpore, and a third at Bareilly, by different officers, themselves ignorant of the details of the crimes, to which the approvers testified, and the three depositions thus taken were found to correspond with each other, and with

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in taking the defence of the two prisoners, whose cases they noticed when these papers were last before them, was to some extent accidental, and that this irregularity will not again occur.

They regret, however, to observe from the 5th paragraph of his letter to the sessions judge, that the commissioner considers himself justified in arresting and detaining persons suspected of dacoity merely in the hope that they may confess. If there is really any necessity for proceedings of this nature, that necessity should be distinctly shown, and application should be made to the Legislature to sanction them. At present they are illegal; and may subject the officer, who resorts to them, to very unpleasant consequences. The Court cannot conceive, however, that such a necessity exists or that the observance of the ordinary law of criminal procedure can, in any case, operate to prevent persons who ought to be arrested and tried as dacoits from being so dealt with. The law requires that before issuing a warrant of arrest, the magistrate should either have a charge on oath before him from some person acquainted with the facts of the case, or if he acts under the powers vested in him by the latter part of Section 4, Regulation IX. of 1807, that he should record a proceeding, setting forth the grounds of the information on which he considers the issue of the warrant to be necessary. If he has no charge, and no credible information to record there can be no pretext even of expediency for the arrest. If he has credible information whether in the shape of a charge or otherwise that the person against whom he wishes to proceed is a member of a gang of dacoits, he can have no difficulty in taking down the charge, or in drawing up an official proceeding stating what the nature of the information, on which he acts, is. In like manner it is impossible to suppose, that the operations of the dacoity commissioner can be impeded by a compliance with the wholesome rule that the prisoner should be called upon to answer the charge against him as soon after his arrest as possible; and if remands be necessary for the purpose of completing the evidence they should be officially recorded with the grounds on which they are deemed necessary. The dacoity commissioner may rest assured that while these formalities are necessary for the protection of the subject from seizure and detention on arbitrary and insufficient grounds, they form no obstacle to the apprehension and conviction of real criminal.

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the recorded facts of the different crimes mentioned in these depositions, as *subsequently* ascertained, no reasonable doubt as to their substantial correctness could be entertained. But the system in the dacoity department, we are sorry to perceive, appears to be very different. The dacoit approvers are all retained together, it would seem, on the same premises; and the examinations of prisoners, who propose to become approvers, are not always taken in full, as they ought to be immediately upon their expressing a desire to confess, and before they have had an opportunity of communicating with the other approvers.

We have no certainty, under this system, that the approvers are not colluding with each other, and that they have not had opportunities of learning from others the particulars of the dacoities to which they depose.

We desire that the additional sessions judge will draw the attention of the dacoity commissioner to these remarks, and will point out to him the great importance of adopting a different system, if he wishes this court to place any reliance on the statements of his approvers. At present we are constrained to reject their testimony whenever it is unsupported by independent evidence.

We request, also that in future when the additional sessions judge observes, that prisoners have been under trial for an unreasonable length of time, or that any delay has occurred in putting them on their defence, and enabling them to meet the charge which has been brought against them, he will not content himself with noticing the circumstance, but will at once make all necessary enquiries into the cause of the irregularity, and report the result in his letter of reference.

We are furth r of opinion that the additional sessions judge ought, in trying cases of dacoity, invariably to ascertain, and note the circumstances, under which the *first* examination of the approver and his subsequent depositions were taken; in what custody he has been; what access to him the other approvers have had; and what measures have been taken to prevent collusion. It is evident, that in judging of the weight which is to be allowed to the evidence of an approver, these are all points of the utmost importance.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND HOSSEIN ALEE

versus

MAHOMED KAMIL CHOWKEEDAR.

Chittagong.

1856.

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Case of MAHOMED KAMUL.

Prisoner, a chowkeedar, convicted of theft with wounding imprisoned for fourteen years.

CRIME CHARGED.—1st count, the defendant No. 12, being at the time actually employed in the capacity of watchman of the Mohullah, wherein prosecutor Hossein Alee resides, is charged with having entered the prosecutor's house, and with stealing therefrom property valued at Rs. 4, and with having severely wounded the prosecutor.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 2nd September, 1856.

Remarks by the additional sessions judge.—The prosecutor states that having been roused from sleep one night in Assar last, he saw a man in the house close to a basket of cotton which had fallen from its bamboo stage to the ground and immediately seized the intruder, who being a powerful man got some little distance away from the house notwithstanding the prosecutor's endeavours to detain him, but was unable entirely to shake off the detaining grasp till he struck prosecutor a blow with a bill hook on the inner side of the right knee, which brought him to the ground. The prosecutor states moreover that he recognized the midnight intruder into his house who escaped from his grasp only by inflicting a severe wound to be Mahomed Kamil the chowkeedar of his village. These statements are supported by the testimony of four neighbours of the prosecutor's, who, roused by his calls for assistance, came out of their houses only in time to see the prisoner running in a direction leading from the prosecutor's to his own house and to find the prosecutor on the ground helpless and bleeding.

Vide depositions of witnesses
No. 1, Khoolun.
" 2, Charag Ali.
" 3, Shumshere Ali.
" 4, Munsur Ali.

So severe was the wound that the medical officer thought it not improbable that the sufferer's case might terminate fatally or result in the loss of the injured limb.

Vide deposition of witness No. 10, Dr. W. B. Beatson.

The prisoner's defence is, that the charge is absolutely false and has been brought against him in pursuance of a conspiracy

among the villagers to ruin him, because he has pressed them for arrears of pay.

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Case of MAHOMED KAMUL.

The prisoner called two witnesses, but refused to have the one who was present on the trial, examined.

On the prosecutor's statement corroborated by the depositions of the witnesses to the flight of the prisoner, and having regard to the testimony of the civil assistant surgeon, who examined the prosecutor's wound, I concurred with the law officer in convicting the prisoner of an attempt to commit theft in a house, and of inflicting upon the prosecutor corporal injury to such a degree as to endanger life, and, as required by Clause 4, Section 8, Regulation XVII. of 1817, sentenced him to be imprisoned and transported for life.

Under the same law I refer the trial to the Nizamut Adawlut and beg to state that I consider that the dangerous character of the wound was purely accidental, and that this consideration appears to indicate a ground for the mitigation of the sentence, imprisonment for fourteen years would, in my opinion, be punishment adequate to the crime established against the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) Under all the circumstances of the case, we agree in the views expressed by the judge, and sentence the prisoner as recommended.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
HAIMUN LALL.

Shahabad.

1856.

October 3.

Case of HAIMUN LALL.

Prisoner who had been convicted of perjury and sentenced to three years' imprisonment without labor released, the

CRIME CHARGED.—Perjury in having on the 17th April, 1856, intentionally and deliberately, in reply to questions Nos. 6 and 7, deposed under a solemn declaration taken instead of an oath before the *deputy magistrate* of Saseeram, that "the writing on these two pieces of stamped paper (which I see with the record and recognize) are in my hand-writing, but that they, by mistake, were not entered in the book," and in having on the 9th May, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Shahabad, that "the paper marked B. was sold by me, and the other paper marked A. which is endorsed on the back with my name as sold to Imrit Chamar is not in my hand-writing," such statements being contradictory to each other on a point material to the issue of the case.

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Case of HAIMUN LALL.

Court being of opinion that the crime of wilful perjury was not established against him, but that the contradictions apparent in his different depositions arose from confusion of mind on the part of the prisoner, caused to some extent by the mode of cross-examination to which he was subjected.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. B. Drummond, magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 14th June, 1856.

Remarks by the officiating sessions judge.—The circumstances connected with the case in which this perjury was committed are detailed at length in my letter No. 83,* of the 2nd June, 1856, to the Sudder Nizamut Adawlut; the prisoner is the stamp-vendor on the part of the collector in mouza Beerbhoom, and appears to have sold two stamp papers both bearing the same date and number; before the deputy magistrate he stated that the endorsement on both of these were in his hand-writing, and before this court he stated that the one marked A. was not in his hand-writing. Witness No. 1, proves his deposition before the deputy magistrate, and Nos. 2, 3 and 4, depose to that given before this court; Nos. 5, 6 and 7, are witnesses to his answer at the foujdary, which is, that what he stated before the deputy magistrate was correct, and that when he gave his evidence in this court, the vakeels began to ask questions and he became confused; his defence before this court is to the same effect, with this addition, that he says that what he stated before the collector as well as the magistrate was correct, whereas in his deposition before this court on the 9th May, he says that when questioned by the collector he was ill and was forced to say what is written in his statement before that officer.

The *futwa* of the law officer convicts him of the charge in which I concur, sentencing him to imprisonment for three years without labor in consequence of his age (57 years) and his being apparently not in good health.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) It does not appear, on consideration of the whole of the circumstances of this case, that the crime of wilful perjury has been established against the prisoner. Prisoner explains that in his deposition before the deputy magistrate he had conceived both the papers to have been endorsed by him, as he supposed the hand-writing to be his, and that all men might at times be deceived as to their hand-writing. When re-examined before the sessions he stated that the endorsement on one only was in his hand-writing; but in both the examinations in which the contradictions exist, we find evident traces of confusion on part of the prisoner, and some extent of it in the mode of cross-examination, to which he was subjected. We cannot for the above reasons agree in the conviction; but acquitting the prisoner, order him to be released.

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* See Nizamut Report dated 2nd August, 1856.

PRESENT:

C. B. TREVOR AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT AND JHALOO BEEBEE

versus

BIRESHUR CHOWDRI (No. 1,) CHUNDEECHURN GHOSE (No. 2,) NOBINCHAND MUNDUL (No. 3,) PELOO MISTREE (No. 4,) LALLCHAND MAL (No. 5,) BUGGOBUTTYCHURN BANERJEE (No. 6,) KOMULLOCHUN DUTTO (No. 7.)

24-Pergunnahs.

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Case of BIRESHUR CHOWDRI and others.

CRIME CHARGED.—Wilful murder of Jaffer Meer.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 28th June, 1856.

Held that if prisoners, charged with the offence of murder, wish to impugn the accuracy of the opinion given by the medical officer making the *post mortem* examination, they should summon medical evidence before the sessions judge for the purpose of contradicting that opinion *on a fact deposed to by the officer making the post mortem examination;* but this Court, when that officer's evidence is *unopposed by any scientific evidence to a contrary effect*, cannot venture *itself* to apply doctrines laid down in text book on medical jurisprudence to the particular facts deposed to by the medical officer—but will accept this officer's opinion as to the immediate cause of death.

Remarks by the additional sessions judge.—The real prosecutor in this case is Rammoni Dossi, a widow, possessing large

The Court was of opinion, that the deceased Jaffer came to his death by violence, but disbelieved the evidence produced by the prosecutor to bring the crime ot the murder home to prisoner at the bar for the following reasons.

1st. Inasmuch as on the supposition that the statements made by the witnesses Sumboo Puramanick, Saboo Paik, Kisto Sawunt, Mungul Dass Sawunt and Joynarain Bhose at the thannah are true, those parties including the gomashta Joynarain were in possession of the names of the murderers *before* the gomashta sent the Paik Sumboo to the thannah, to give information of the murder, nevertheless the Paik was instructed to report *generally* that Peareeloll Mundul's people had committed the crime, that their conduct on the part of the gomashta cannot be credited, it is opposed to probabilities and to all experience of the actions of the mofussil amlah of zemindars who are always too ready to accuse individuals hostile to their employers, that consequently the Court rejects the statement which attempts to show that the names of the murderers were known but not reported, and think, that the gomashta reported no names to the thannah because none were *then* known and that the statements subsequently given before the police were after attempts to fix the crime on some of the most influential of Peareeloll Mundul's servants.

2nd. Inasmuch as the evidence of the parties who deposed that they were eye-witnesses to the occurrence, is full of contradiction and improbabilities.

3rd. Inasmuch as the whole story on the part of the prosecution is highly improbable.

Prisoners acquitted and directed to be immediately released.

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landed and other property, and the prisoners are either servants of Baboo Peareeloll Mundul, also a wealthy zemindar, or are in his interest; their defence having been made jointly by the same pleaders.

These two zemindars are nearly related; but between them and their respective agents and servants, there has been for some years a bitter feud regarding the Pattabaria estate; and latterly a third party, or Mudhoosoodun Mundul, has been mixed up with them as to a five annas (undivided) share in the property, but though apparently not I think in reality to the detriment of the claims of Peareeloll Mundul. The result of this feud has been a series of charges and countercharges in the criminal courts, and lastly a regular suit in the civil court for the lands. Peareeloll Mundul professes to be out of possession pending the result of this suit, (instituted by himself) but Mudhoosoodun Mundul still claims occupation of his five annas, and Rammoni ot *the entire sixteen annas.*

The case for the prosecution is that on the morning of the 10th April last, Joynarain Bang, Rammoni Dossi's gomashta at Pattabaria, deputed Kisto Shawonth to take 15 Rs. of rent to their mistress (or her naib, it is not certain which) at Talygunge. With Kisto was associated the deceased Jaffer Meer, admitted to have been, though only having the use of one arm, a fighting-man *latteeal* in Rammoni's employ for protection. Subsequently, after leaving Joynarain Bang the gomashta with the money, Kisto professed himself to be too unwell to proceed; and, unknown to his employer, got his brother Mungul, to go in his stead. They (Mungul and the deceased Jaffer Meer,) were proceeding by the road through the lands of Barkalkeepore, a large market called Bihihat, belonging to Peareeloll Mundul, being close on their right hand, when from a low mulberry jungle issued some twenty or twenty-five men, the seven prisoners being of their number, and prisoners Nos. 1 and 2, (and perhaps No. 7,) leading and directing the party, who, Jaffer being some distance ahead of his companion, set upon him with clubs and spears and put him to death, partly by wounds with the said clubs and spears, and partly by stamping upon, or otherwise, violently pressing upon his chest and body. The medical testimony is distinct that the deceased died of the injury to the chest and that the spear and other wounds were inflicted *before death.*

Witness No. 12.

Witness No. 1.

Witnesses Nos. 1, 2, 3, 4 and 5.

Dr. Strong, witness No. 11.

Mungul appears to have run back to Pattaberiah on seeing what occurred, and to have immediately told his story to his brother

Witness No. 1.

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Witness No. 13. Kisto, who communicated it to the gomashta, concealing, I think, the fact that Mungul had gone with the deceased and not he. This concealment, if I am right in my supposition, will easily account for the gomashta not making any direct inquiries of Mungul, and for certain discrepancies regarding the fate of the 15 Rs. of rent and other matters, in which Kisto's name is mixed up, and which disagree with the results of the subsequent enquiry and the evidence.

Witness No. 12.

The gomashta, Joynarain, lost no time in reporting the circumstance at the thannah, which is six miles from Pattaberiah, through the witness Shumbhoo, also a servant of Rammoni Dossi's. This man reached the thannah at 5½ P. M. of the day of the murder, and he reported simply, that Kishto, (evidently from that person's misrepresentation to his superior, the gomashta, which the latter subsequently seems to have wished to hide,) had been detained by Peareeloll's people with the money he had charge of, and Jaffer Meer, killed by "Baboo Peareeloll Mundul's people." It is evident that if Kishto had gone and been detained, nothing would have been known, and I agree with the magistrate in thinking that the prisoners not having been named by the gomashta in an immediate hurried message to the thannah through an ignorant messenger, is proof that the charge has *not* been trumped up against individuals. There was no time lost by the police. They were on the spot as soon as possible, and the first thing the next day Mungul's and Kishto's depositions were recorded. Whatever Kishto said then or subsequently to the magistrate, is of no importance. Personally he knew nothing, and when he said to the magistrate he had reported the deceased had been carried off, he was merely continuing his former evasions and speaking at random. Mungul's evidence, however, was clear enough. He distinctly and unhesitatingly declared he had seen all seven prisoners attacking the deceased under the orders and direction of prisoners Nos. 1 and 2, who led the attacking party. Before me he says No. 7 prisoner was one of the "Surdars," but this is of no importance, while his hesitation as to having had any interview with the gomashta, Joynarain, on the day of the occurrence, *after* Sumbhoo had been sent to the thannah on Kishto's information, is equally so. Before me, as on the 11th April, to the darogah, he implicates all seven prisoners. Before the magistrate he omitted one, No. 6, who is a Brahmin, and whom I observe several of the witnesses have shown a wish to screen. By Mungul's deposition, it appeared several others passing to and from the Bibihat market, saw what occurred, and they too were sought for and examined.

Witness No. 12. Witness No. 15.

Of these last, all were examined by the police on the 12th

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Witnesses Nos. 2, 3, 4 and 5. April, or within forty-eight hours of the deceased's death. Witness No. 4, (Tarachand,) the first whose deposition was taken was with witness No. 5, (Mudhoo,) returning from Bibihat market, and saw all that occurred. On the 12th April, he denounced all the prisoners as engaged in the offence except No. 6, the Brahmin Bhuggobutty, and the witness Mudhoo corroborated his statements particularizing prisoners Nos. 3 and 4. The witness Jadub did the same, particularizing the prisoners Nos. 1, 2 and 7, (on the ground of their being the heads of the attacking party,) and the witness Chytun the same, particularizing No. 3 prisoner.

No. 5.

No. 3.

No. 2.

Of these four witnesses (excluding the witness Mungul, No. 1,) the second and fifth implicated all the prisoners before the magistrate; No. 3, all but the prisoner Lallchand Mal, No. 5, but No. 4, named only the prisoners Nos. 3, 5 and 6. In this court, as when first examined by the police, they all again denounce the whole of the prisoners but Bhuggobutty, and he too is only omitted by two of the four.

Witnesses Nos. 6 and 7, were also present a part of the time, it would appear, but I am of opinion their evidence is suspicious.

There are of course some difficulties in this case, but not more so than there must be in all cases which result from the disputes and quarrels of three influential zemindars, whose power and wealth are brought to bear on all persons deputed to investigate, or summoned to give evidence, and through whose unfair tamperings, subornations, and threats, the story for the prosecution is always exaggerated, if not perverted, and for the defence supported by evasive pleas and false evidence. Still public justice must not be defeated on that account, where, as in this instance, an atrocious and cruel crime has been undoubtedly committed. If the prisoners waylaid the deceased, they came to know of his approach probably from some of their friends at Pattaberia, attached to the cause of Mudhoosooden Mundul, the claimant to the five annas share, who, it is admitted, has a cutcherry there, but it seems somewhat strange that the deceased should have been waylaid in so public a place. The witnesses too for the prosecution are all tenants of the prosecutrix, Rammoni Dossi, but then again all those for the defence, thirty-seven in number, bear the same relation to Peareeloll Mundul, and as the magistrate justly observes no tenant of either would dare to give evidence against his landlord. The discrepancies in the evidence of Sumbhoo and Kishto, are evidently due to the latter's desire to conceal at first his having unauthorizedly sent his brother with the deceased instead of going himself; and those in

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the evidence of the four witnesses to the fact, Nos. 2, 3, 4 and 5, may I think, be explained by the uncertainty in a sudden rush of twenty or twenty-five persons as to whom they really recognised taking a particular share in the outrage. Within twenty-four hours, the first witness Mungul denounced all the seven prisoners, and within twenty-four hours more, the witnesses Nos. 2 to 5, were found, and had corroborated his statement; and if Kishto had sent his brother to report the matter to the gomashta Joynarain, (witness No. 12,) instead of going himself, I have little doubt but that the messenger to the police thannah (the witness Sumbhoo, No. 15,) would have at 5 P. M. that day reported the names of the offenders as the witness Mungul did the following morning.

In their defence, the prisoners do not, to me, attempt to account for the deceased's death, and the witnesses summoned by the first prisoner Bireshur Chowdry on this point, were withdrawn. The defence of each amounts to simply a denial and a plea of *alibi*. They add that Peareeloll Mundul, being avowedly out of possession, why should he still continue a contest for the property. But as I said before, all the defences filed were handed in by the same two pleaders, who have appeared on a joint power of attorney for all the prisoners, and the chief prisoner at least Bireshur Chowdry, is an admitted servant of Peareeloll's, who doubtless maintains a good understanding with the claimant to the five annas share, Mudhoosoodun Mundul, between whom and Peareeloll Mundul *who claims the whole sixteen annas*, there has never been one single charge made in the criminal courts, or any hint to the police of a collusion, as there has been more than once between Peareeloll and Rammoni Dossi.

The first prisoner says he was on the day in question at Peareeloll Mundul's house at Shahanugur, ten or twelve miles from the scene of the murder, but prisoner's chief witness, Baboo Pearceloll Mundul, admits prisoner was engaged at the time in superintending the digging of a tank at a place called Jonka, which is some miles from Shahanugur, *in the direction of Bibihat*, and has not explained why or for what he should, on that particular day and for three days previously, have left his duty at Jonka, to spend his time at Shahanugur, or why he should remember the circumstance "because he was digging this tank at the time." Witnesses Nos. 19, 20 and 21, seem to me to give the most worthless evidence in support of the *alibi* plea as well as on some points contradictory of that given by their common master.

Prisoner No. 2, says he was at Pattaberia, that day, but Pattaberia is only a mile from where deceased was killed. He also is a farmer under Mudhoosoodun, the five-annas' proprietor. His witnesses (Nos. 31 to 34,) wish to have it believed

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they were sitting all day with the prisoner in the zemindary cutcherry; but they contradict one another point-blank as to how prisoner was employed.

Prisoner No. 3, also resides at Pattaberia, and is also, he says, Mudhoosoodun Mundul's tenant. He states that he and Joynarain, Rammoni's gomashta, had had two cases in the criminal courts,

Witness No. 12.

when the latter was punished in one. This is true, but in my estimation proves nothing but the constant quarrelling and bad feeling between the parties. Joynarain was fined 10 Rs. for the assault on the 23rd January last. This prisoner has cited three witnesses (Nos. 35 to 37,) to prove he went from home (at Pattaberia or Deolberia, the same place) to buy grain that morning, but they were by noon home again *within a mile of the scene of the murder*.

Prisoner No. 4 is a tenant of Mudhoosoodun's at Pattaberia. His present defence does not coincide with that made by him before the magistrate. His witnesses (Nos. 38 to 42,) say he dined that day with them at Egaragaon, *barely two miles from the place of the murder*.

Prisoner No. 5 is a peada of Mudhoosoodun's. All he says in his defence is, that he was once a witness in a summary suit against Rammoni Dossi. His witnesses Nos. 43 and 44, (for he declined examining Nos. 45 and 46,) say he was stacking straw that morning at Pattaberia, and afterwards went with them to a place called Baknahri, but this they admit *is a mile only from the place of the murder*.

Prisoner No. 6 is a Pattaberia tenant of Mudhoosoodun's. He says he has complained against Rammoni's people in the foujdary, and had them punished, which is true. This is the same case as that alluded to in which Joynarain Bang was fined 10 Rs. Of prisoner's witnesses, six in number, he only permitted me to examine two, Nos. 47 and 49. They say they saw him all that day in a crowd assembled to worship in a *thakoorbari, a mile from the scene of the murder*.

Prisoner No. 7 is a tenant of Mudhoosoodun's at Pattaberia. His witnesses say he spent the whole morning at the Deolberia or zemindary cutcherry *one mile from the place of the murder*. The law officer acquits discrediting the evidence.

It is quite clear a cruel and cowardly murder has been the cause of the deceased's death. I think making allowances for all the circumstances, it has been sufficiently proved this murder was the act of the prisoners at the bar. And I am of opinion their defence is unsatisfactory and worthless. I would, under all the circumstances of the case, recommend that all and each of the seven prisoners be sentenced to imprisonment for life in transportation. It would be well for the country if these zemindary disputes could be made more to bear upon the principals

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and real offenders; and I will beg to express a hope that the civil suit instituted in 1854, for the lands with reference to the rival claims to which this crime has been perpetrated, will be speedily adjudicated upon.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and D. J. Money.) The prisoners, in this case, stand charged with the wilful murder of Juffer Meer and all plead *not guilty.*

Looking first to the crime charged against the prisoners, it appears from the depositions of Dr. Strong, both that taken before the magistrate, on the 28th April, 1856, and that before the sessions judge, on the 16th June, 1856, *that the immediate cause* of the death of Juffer Meer was the great injury done to the lungs and heart caused by external violence either by blows or by pressure, by jumping on the chest; punctured wounds were visible on the body which were inflicted by some pointed instrument possibly spears, and other wounds there were on the body which had been apparently inflicted by clubs or other heavy blunt weapon. Dr. Strong had no doubt that the injury was inflicted before death, and he adds that if the spear-wounds had been inflicted on the body after death, they would not have bled.

Mr. Montriou, on behalf of prisoner No. 1, urged that the depositions of Dr. Strong could not be taken as conclusive of the violent death of Juffer Meer; that it was opposed to the science of the present day; and that the state which he represents the body to have exhibited, viz., that of a great quantity of extravasated blood in the left lung and a large quantity of coagulated blood in the heart, might have arisen from natural causes; moreover, that the opinion regarding the spear-wounds to the effect that if inflicted on the corpse after death, they would not have bled, was incorrect; in support of these views, Mr. Montriou referred to various passages in Taylor's Medical Jurisprudence.

The depositions of Dr. Strong are the only medical evidence on the record; had the prisoners wished to impugn the accuracy of Dr. Strong's medical opinion, they should have summoned medical evidence in the court below for the purpose of contradicting that opinion *on the facts as deposed to by Dr. Strong;* as that has not been done, and as Dr. Strong's evidence is the opinion of a scientific person, resting on his personal observation and on facts within his own knowledge, and is *unopposed by any scientific evidence to a contrary effect*, the Court cannot venture, as it has been urged to do, itself to apply any doctrine laid down in a text book on medical jurisprudence to the particular facts deposed to by Dr. Strong, but accepts that opinion as to the immediate cause of the death of Juffer Meer.

As to the time at which the spear-wounds were inflicted, that is, whether before or after death, as there is evidence on the

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record of parties who saw the corpse, *opposed* to that of Dr. Strong, we do not think the opinion of that gentleman conclusive on that head, and, if necessary, will allude to this portion of Dr. Strong's evidence hereafter.

As then we are of opinion that the deceased came to his death by violence, the only question remaining for enquiry is, whether that violence was inflicted through the orders of, or by the prisoners at the bar.

In a case of this nature in which the parties on both sides are dependents of influential zemindars, it is of the first importance to note the earliest statements of the occurrence which were made before the police.

Sumbhoo Pramanick, a paik in the employ of Rammoni Dossi, who first gave information at the thannah of Bistopore, about 5-30 P. M. of the 10th April, the day of the occurrence of the alleged murder, stated before the jemadar of that thannah that Saboo paik had reported at Pattaberia; that on the morning of that day, Juffer with Kisto Sawunt were going to Tallygunge, when unknown persons from Kalkeapore, people of Pearee Mundul, robbed and murdered them; that Saboo did not know what had become of Kisto; that the gomashta, Joynarain Bhose, then sent him, Sumbhoo, first to see the corpse and then to give information at the thannah; that he saw that Juffer Meer had fallen with spear-wounds; that he did not know whether Kisto was alive or not, neither did he know how much money was with Juffer Meer.

Saboo Paik, on the 12th of April, before the police stated that in consequence of sickness he was at home on leave and that Mungul Sawunt came to his house and said that Pearee Mundul's people had killed Juffer; that Peloo Mistree, prisoner No. 4, Jetoo Mistree and Nobin Mundul, prisoner No. 3, had killed him, and that Lallchand Mal, prisoner No. 5, had struck him with a blow of a *lattee;* that he, Saboo, then went to Pattaberia and gave the information, first to Sumbhoo and then to the gomashta, Joynarain Bhose, and that afterwards he gave notice of the occurrence to Jetoo Bibi, the widow of Juffer Meer.

Kisto Sawunt, before the police, stated that he, on the morning of the alleged occurrence, had been ordered by the gomashta, Joynarain Bhose, to take 15 Rs. rent to Tallygunge—he replied that he could not go alone; that the gomashta then said, Take Juffer with you; that the gomashta delivered to him 15 Rs. with a letter, a *chellaun*, and then went to Bowah, about two *coss* distant; that he, Kisto, then went home to eat; that he, after eating, had a pain in his stomach, so he told his brother, Mungul, to go with Juffer in his stead; that about twelve or one, Mungul returned with the money, letter and *chellaun*, saying that as Juffer and himself were travelling, the former in

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advance and he behind, Bireshur Chowdri, prisoner No. 1, Komul Dutto, prisoner No. 7, Chundee Ghose, prisoner No. 2, Degumber Mal, Lallchand Bang, Lallchand Mal, prisoner No. 5, Nobinchand, prisoner No. 3, Peloo Mistree, prisoner No. 4, with twenty or twenty-five men surrounded Juffer, struck him with spears and he fell to the ground and that he knew not whether he was alive or dead; that he, Kisto, then gave information to Ookeeloodden Burkundaz of Pattaberia and Shumshere Burkundaz of phauree Bowah, who were together; that he then went to the cutcherry and not finding the gomashta there, he went to Bowah, where the gomashta lives and told him of the occurrence and returned to him the money, *chellaun* and 15 Rs. This witness before the magistrate deposed, it may be remarked, that he told the gomashta all the names he had heard.

Mungul Doss Sawunt, the brother of Kisto Doss, the previous witness, repeats his brother's statement as to his substitute for him in the business of carrying the 15 Rs. to Tallygunge; he then proceeds to add that Jaffer and he were going together when near Bur Kalheapore, about twenty or twenty-five men, of Peareeloll Mundul, including Bireshur Chowdri, No. 1, Komul Dutto No. 7, Buggobutty Banerjee No. 6, Chundeechurn Chatterjea, Chundeechurn Ghose No. 2, Nobin Mundul No. 3, Lallchand Bang, Peloo Mistree and others, attacked Jaffer and killed him; that in the hands of certain of the prisoners there were spears, and in those of others *lattees;* that he, Mungul Doss, was meeting a call of nature about one *russee* distant from Jaffer, when he saw the attack; he then mentioned the name of the eye-witnesses to the occurrence who were near him at the time; he told what he had seen immediately to his brother, Kisto, and to Saboo Paik, whom he met on the road; before the sessions this witness prevaricated regarding his having mentioned the names of the prisoners to the gomashta on the day of the occurrence of the crime.

Joynarain Bhose, on the 12th April, stated before the police that about 10 o'clock of the day of the occurrence he arrived at home after having been to Bowali to Rammoni Dossi; that shortly after 12 o'clock Kisto Sawunt returned to him 15 Rs. a *chellaun* and letter which he had directed him to take to Tallygunge and told him that he, Kisto through indisposition had been unable to go, but had sent his brother, Mungul, who had reported to him that *all* the prisoners and others had attacked Jaffer and killed him; the gomashta then saying that he went to Pattaberia, saw Sumboo Paik and Saboo Paik, standing together and that he sent Sumboo to the thannah to give information of the occurrence; before the magistrate and the sessions judge the deposition of this person was unsatisfactory in the highest degree.

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On the supposition that the above statements made at the thannah within forty-eight hours of the alleged occurrence are true, it would seem that various parties and even the gomashta, Joynarain, himself were in possession of the names of the murderers *before he sent the Paik, Sumboo, to the thannah to give information of the murder;* nevertheless, he, contented himself with instructing the paik to report generally that "Peareeloll Mundul's people had committed the crime; undoubtedly when names are *really unknown*, the non-mention of parties in a first report to the police is commendable, as shewing no undue desire to accuse individuals; but in the present case, the court is called on to give credit to the fact that the gomashta of one zemindar having in his hands the means of naming and thereby at once crushing some of the principal retainers of another rival and hostile zemindar, did not avail himself of the opportunity, but sent a paik unaccompanied by any one to report *generally* that his rival's people have committed a great crime; to such conduct on the part of the gomashta, the Court cannot give credit; it is opposed to all probability and to all experience of the actions of the mofussil amlah of zemindars who are always too ready to accuse individuals hostile to their employers; we therefore reject the statements which attempt to show that the names of the murderers were known but not reported, and think that the gomashta reported no names to the thannah, because none were *then* known, and that the statement given before the police on the 11th and 12th April, were after attempts to fix the crime on some of the most influential of Peareeloll Mundul's servants; this view of the matter too is confirmed by the fact that the first report which reached the magistrate on the morning of the 11th from the zemindar herself mentioning no names though, *if they had been known*, they must have reached her very shortly after the occurrence.

Under this view of the case, in its commencement, it becomes unnecessary for us to dilate on the improbability of two persons being sent to convey 15 Rs. of rent to the custody of the zemindar or to analyse the evidence of the parties who depose that they were eye-witnesses to the occurrence; their evidence is full of improbabilities and in our opinion is brought forward to support a false charge against the prisoners at the bar.

As then we are of opinion that the crime, with which they are charged, is not proved against the prisoners, it is unnecessary for us to examine the evidence opposed to that of Dr. Strong, as to the time at which the spear-wounds were inflicted, that is, whether before or after death, as even supposing they were inflicted before death, the prisoners, in our view, are not connected with their infliction.

Disbelieving the evidence brought by the prosecutor, we have not thought it necessary to enter upon the defences of the pri-

soners. We acquit them of the crime laid to their charge and direct that they be immediately released.

The sessions judge believes, and we think it probable, that an atrocious and cruel crime has been committed, and we are equally with him desirous that public justice should be satisfied by the punishment of the offenders, though, under the view of this case expressed above, that satisfaction is not to be obtained in the mode suggested by him.

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PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND NARAONEE DEBBA FOR HERSELF AND ON BEHALF OF LUKHEE MONEE DEBBA AND SHAMASOONDRY DEBBA

versus

GOPEEMOHUN BHUTTACHARJE.

Nuddea.

1856. October 3. Case of GOPEE MOHUN BHUTTACHARJE.

Prisoner released as it did not appear from the evidence of the prosecutor that any distinct or wanton injury to property was brought home to the prisoner or that the matter was one of a criminal prosecution at all.

CRIME CHARGED.—1st count, destruction and wanton injury of the property belonging to the prosecutrixes; 2nd count, plundering a portion of the above property.

Committing Officer.—Baboo Issurchunder Ghosal, deputy magistrate of Santipore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Nuddea, on the 3rd September, 1856.

Remarks by the additional sessions judge.—The prisoner is charged in two calendars with a repetition of the same offence, on the prosecution of the same prosecutrix, and on the evidence of the same witnesses, and the trial has been held by me with respect to both charges as if it were one.

It is alleged for the prosecution that prosecutrix resides in a large *pucka* house in the town of Santipore, part of which is occupied with her permission by Juggunnath Sircar chowkeedar, witness No. 3, and that while she was absent from home on the 19th September, 1855, the prisoner, who is the zemindar's gomashta, at the place, pulled down part of the premises and carried off the material to construct a house with elsewhere as well as some personal property in the *dâlan* of the house, of small value and consisting of brass pots only, belonging to the prosecutrix. It is shewn that while the building was being pulled down the witness Juggunnath, already mentioned, reported what was going on to the thannah darogah, who refused to interfere. It is further alleged that on the following day while pulling down and carrying off a second portion of the materials

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of which the house was constructed the prosecutrix returned and then took the matter into her own hands, first reporting the outrage to the police and then on not getting redress, petitioning the deputy magistrate in the matter. This petition was entered five days after the occurrence, but the four previous days it appears the court had been closed, while the police deny, or when asked are silent rather, as to any report having been made to *them* by the prosecutrix in person.

For the defence, the prisoner has throughout admitted he never lived in the house, and he adds that Juggunnath did live in it by *his* permission, but he adds, the house is nevertheless his, it having been purchased by his father Kishanath, more than thirty years ago from prosecutrix's brother, one Hurchunder. The prisoner produced in the court below, the actual bill of sale dated in 1220, B. S. and the deputy magistrate has, in a third calendar, committed the prisoner for uttering this instrument knowing it to be forged. Though the paper does not appear and probably is not genuine, yet no evidence of its being a forgery was forthcoming in this court, and prisoner has been acquitted on *that* charge. Had it not been made, the magistrate would probably have deemed himself competent to dispose of these charges without reference to the sessions under Regulation IX. of 1807, Section 19.

The prisoner states besides what I have above detailed, that he is on bad terms with one Palinder Gosain, who has instigated the prosecutrix to institute this false charge against him.

There is doubtless a conflict of evidence in this case, but it seems to me that it preponderates greatly on the side of the prosecution as to the destruction and wanton injury of prosecutrix's property. The plundering of the personal goods is undoubtedly not proved, and the said goods are equally without a doubt, prisoner's property. It is proved by the witnesses for the prosecution, the prosecutrix has lived in the house for many years, and her tenant, the witness Juggunnath, declares he has all along occupied a part of the building with her consent and not with that of the prisoner. On the other hand, if this Juggunnath were, as prisoner represents, *his* employée, he would undoubtedly have spoken for *him*, the powerful gomashta, and not for prosecutrix the poor widow. Not a single witness of all cited for the defence, knows any thing of prosecutrix having acted by the instigation of, or being in any way connected with the Palinder Gosain, prisoner declares to be his enemy; it is impossible the prosecutrix should have trumped up such a charge against such a man without some good cause; of all the thirty witnesses, prisoner has summoned, only sixteen have been examined by him and of these only three say they heard the house was his (prisoner's) from persons they once saw cutting down some trees in the enclosure saying so, while it is not likely

if prisoner's father bought the house thirty years ago, no one belonging to prisoner should ever have lived in it, or rented it to another, or touched the materials for so long a period. The municipal tax for the premises has been always paid by Juggunnath too in his own name, which might be, if joint-occupant (for her protection) with the prosecutrix, but would scarcely be if living there as prisoner's hired servant.

The offence charged in this calendar is doubtless a criminal misdemenour, (see Circular Order, 26th June, 1855,) and one cognizable by the magistrate, if the party accused had not been implicated in another calendar of commitment to the sessions. When I first called up the case I had some doubt whether the offence, not being one provided for by express law, could be punished as a Mahomedan crime under Clause 2, Section 7, Regulation LIII. 1803, but the law officer declaring it could, I proceeded with the trial. On coming to the defence, however, and the prisoner declaring he held a deed of sale for the property, the law officer pronounced the offence no longer a criminal one, and he declined going on with it.

As I could not at all understand why a criminal offence should have its whole character altered by the nature of the defence of the accused, I proceeded with the trial to a close, and now refer it for the orders of the Sudder Court under Regulation IX. 1793, Sections 53 and 54. In my opinion, an act of violence is not justified by *any* plea, and a person forcing a burglarious entrance into a house occupied by another is not less a burglar, because when asked for his defence he shows a piece of paper he declares to be the title deeds of the house entered. I am further of opinion that it is not competent to a court of criminal justice to stay criminal proceedings pending enquiry into the validity or invalidity of documents so produced. These charges were preferred in September, 1855, and should have been disposed of much sooner than they were by the court below.

I recommend that the prisoner be sentenced to six months' imprisonment without labor or irons and to pay a fine of 200 Rs. or to suffer imprisonment for a further period of six months.

Remarks by the Nizamut Adawlut.—Present: Messrs. J. S. Torrens and C. B. Trevor.) We observe that there has been much confusion and considerable delay in the proceedings of the magistrate, the commitment and final hearing of this case by the sessions. Adverting to the evidence for the prosecution, it does not appear that there was any forcible or violent seizure and wanton destruction of the property brought home to the prisoner, or that that which arose in the dispute respecting the house, was at all to be a matter for a criminal trial. The prisoner must be released.

PRESENT:

E. A. SAMUELLS AND D. J. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT, DURSGOPAL DEY AND MUSST. OOLASEE TAMOLINEE
versus
NOBOO KOR.

West-Burdwan.

1856.

October 6.

Case of NOBOO KOR.

Prisoner convicted of wilful murder and sentenced capitally, the sessions judge's recommendation that he should be imprisoned for life, being overruled.

CRIME CHARGED.—1st count, with having in the day-time of the 3rd August, 1856, corresponding with the 20th Srabun, 1263, B. S., committed the wilful murder of Kisto Dey, brother of the prosecutor Dursgopal Dey, and husband of the prosecutrix Musst. Oolasee Tamolinee, by the blow of an axe; 2nd count, with having on the same day, wounded the prosecutrix Musst. Oolasee Tamolinee, the wife of the deceased by the blow of an axe, with the intention of doing her some grievous bodily harm.

Committing Officer.—Mr. H. Rose, officiating joint-magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West-Burdwan, on the 6th September, 1856.

Remarks by the sessions judge.—The prosecutor Dursgopal Dey, who is the brother of the deceased, deposed before me to the following effect.

The deceased Kisto Dey, Gooreye Baoree, Mudhoo Baoree, Looee Dey, Bijeye Khyra and I went with ploughs and oxen, to cultivate a piece of *puttit* land, lying in the southern *mat* of the village of Bulgooma, called the Sookhya land of Muthoor Kamar. When we were engaged in ploughing it, the prisoner accompanied by his brothers Doolye Kor, Beesoo Kor and Kashee Kor, who were working in their adjacent land, called Syal Khoonya, came and asked us why we were cultivating his land. The deceased denied that it was his, saying that it had formerly been given by all the ryots of the village to Muthoor Kamar, and that it belonged to Balgooma. Upon this, the prisoner observed, that he was one of the said ryots, and would have his three-anna share of the land; the deceased replied that he certainly could claim his share. After this, the prisoner and his brothers, went back to their own land, but I did not see what they did there. The prisoner had no axe in his hand at that time. Shortly afterwards my elder brother, Rummun Dey, Modhoo Dey, Kumul Dey, and Ramtonoo Dey, came up with Nuffur Baoree, Hurroo Khyra and four more ploughs, and saying that all the ryots had shares in the Sookhya land, wished to plough some of it. The deceased dissuaded them

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from doing so, on the ground, that the day was far spent, and that they could decide upon the necessity of their joining in the cultivation that evening. Thereupon Ramtonoo, took away the ploughs, but Rummun Dey remained. At this juncture the prisoner and his brother came back, and repeating their allegation that the land in dispute belonged to Syal Khoonya, forbade us to cultivate it. The deceased repeated his denial of their right to do so, on the ground of the same being the Sookhya land of Muthoor Kamar, and belonging to Balgooma and the prisoner, and his brother returned to Syal Khoonya, but certain bushes, which intervened, prevented us from perceiving what they were about there. After a little time, we gave over ploughing, and were making *ails*, or divisions of fields, and the deceased was sitting twenty or twenty-five *hauts* from us, towards the south, when the prisoner, with a *koolharee* in his hand, came up to him, and struck him with it upon the back of his neck. The deceased first dropped his head forwards, and then backwards, whereupon the prisoner struck him two or three more blows, upon his throat. I went towards the prisoner, with the intention of seizing him; but as he immediately came at me, with the axe, I was obliged to fly into the jungle. He pursued me about twenty *russees*, when the bushes concealed me, and he went back. Making a circuit of about three *russees*, I reached a sugarcane field where I met Lokhoo Dey, Pela Baoree, and Heeroo Tantee, who informed me that the brothers of the prisoner, viz., Kashee, Gooreye, and Beesoo, had wounded Musst. Oolasee, the wife of the deceased, and that I had better not go home, as they were looking for me to kill me. I took their advice, and, instead of going home, went to Saldeeha, about one and half *poas* off, to give notice to Nubbo Sirdar, but he was not there. On returning to the place where the deceased had been struck, I found Rummun Dey, and many other persons assembled, and Kisto Dey lying dead. I began to weep, and when I reached home, found the prosecutrix Oolasee Tamolinee, lying wounded. She had a severe cut on her right shoulder, and a slight mark on her left. On my questioning her, she said that Kashee and Beesoo Kors, and others, had wounded her in her house. A little time after Mohun Roy Tabedar, and Gooroochurn Mookerjea Ghatwal, apprehended the prisoner and bound him in the house of Rummun Dey. Nubbo Roy Sirdar, also came, and seeing the prisoner in custody, went to his house and brought the axe, now lying before the court, from thence. Tudoo Chowkeedar, having given notice at thannah Chatna, the darogah and jemadar arrived therefrom, at about two *dunds*, on the morning of the 21st of Srabun, (4th August,) made inquest, took my deposition and that of Oolasee, and forwarded the corpse of the deceased, with the prisoner to

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Bancoorah. When the latter was questioned, he confessed having slain the deceased and wounded Oolasee.

The mofussil and foujdary depositions of the prosecutor were to the same effect. When cross-examined by me, he stated, that he did not recollect whether the prisoner had the *koolharee* in his hand on either occasion of his coming to dispute about the land; that, as he and his brothers had been cutting jungle in Syal Khoonya, it appeared probable that they had axes to do it with; that prisoner's house was about twenty *russees* distant from his, Syal Khoonya's land; that he did not go there before he slew the deceased; that he said nothing, either at the time of striking, or after having done so; that he raised the axe with both hands when he struck; that he must have said he had wounded the woman Oolasee, to save his brothers from punishment; that there was blood upon the axe when he (deponent) first saw it brought by Nubbo Sirdar; and that he was not present when it was found.

The deposition of Oolasee, before the sessions court, was to the following effect.

I was sitting at my house, making leaf dishes, at about noon, when the prisoner's brothers, Kashee and Beesoo Kors, came running up to me, calling out *kill! kill!* My late husband's brother, Notobur Dey was there, and they rushed towards him, but he got into a house and shut himself up, and so did some of the neighbours. There being no door to my house, the above persons came to me, and having seized me "*Beesoo*, no *not Beesoo*," Kashee cut me with a *koolharee*, which he had in his hand, on the right shoulder, then Beesoo cut at me but I seized the axe with my left hand, and the blow fell, very lightly, on my left shoulder. On my falling to the ground and making outcry, Pela Baoree, Lukhoo Dey, and Heeroo Tantee, came running up, and Kashee and Beesoo fled. When I recovered my senses I heard that the prisoner, Nobo, had slain my husband. I don't know why Kashee and Beesoo, behaved as they did. Her mofussil and foujdary depositions were nearly to the same effect. When cross-examined she stated, that the prisoner must have said he had wounded her, with a view to the salvation of his brothers; that she was seized by Beesoo and Kashee, before she could enter the eastern doored house with Notobur Dey; that she was inside her own house when they laid hands upon her; that the house of Notobur is close to hers; that there was no enmity between her late husband and herself and the prisoner and his brothers; that she was wounded with a different axe from that in court; that she did not know what had become of it; that the prisoner's house is about twenty yards from hers, and that she had never taken any *moong* or vetches, from the prisoner's field, as alleged by him in his confessions. The eye-witnesses Rummun Dey and others, Nos. 1, 2, 3, 4 and 5, all

pretended *in contradiction of the prosecutor Dursgopal*, that they were not present at any dispute between the prisoner and the deceased, and affirmed that the former came, unexpectedly, from a short distance, whether from Syal Khoonya or not, they did not exactly see, with the *koolharee* before the court, in his hand, and then and there slew the deceased, with repeated blows. They all say that he first struck him from behind, and acknowledged that *koolharees* must have been used for cutting certain stumps, &c., which they afterwards saw had been removed from the Syal Khoonya bund. One or two of them acknowledged that enmity had long subsisted between the families of the prisoner and the deceased, and one, viz., Bijeyeram Khyra No 5, when asked by me whether the prisoner had uttered any thing before he struck, said he heard him make use of the expression "*Jey maha Kalee*" or "victory, great *Kalee!*" when raising his axe.

None of these persons knew any thing, personally, of the wounding of Oolasee, but some of them acknowledged that there was *moong* field of the prisoner's between the place of the murder and his house, and, while witness No. 4, denied having seen any women in it at the time, No. 5 acknowledged that he had seen them. It will be observed that Oolasee's witnesses were not sent to this court, by the officiating joint-magistrate, because he conceived her accusation, against the prisoner's brothers, to be spiteful and false, and the former had confessed wounding her himself. The witnesses to the prisoner's apprehension, Gooroochurn Mookerjee, No. 6, and Mohun Roy Ghatwal, No. 7, deposed to their having seized him in his own house, where they found him trembling with fury on a *morah*, with the bloody axe on his shoulder, that he at first refused to yield, saying that he would not do so, nor put down his axe, until he had slain all the brothers and sons of the deceased, and that the axe had fallen, and been left in his hut, when they rushed upon him and carried him off a prisoner to the house of Rummun Dey. The witness of circumstance No. 13, Nubbokishour Roy Ghatwal, was the person who returned to the prisoner's house for the axe, and declared that it had some blood on it, when found. The weapon, which weighs five *poas*, or about $2\frac{1}{2}$ lbs. with its handle, is sufficiently sharp to have inflicted severe wounds when used with force, and it was duly identified by all the witnesses.

The *sooruthal* and confessions of the prisoner, in the mofussil and before the officiating joint-magistrate, were duly proven, by the evidence of the witnesses named under the proper heads in the calendar.

The mofussil confession differed from the statements of the prosecutor and prosecutrix, in the following particulars, viz.

1st.—The prisoner averred that he struck the deceased with

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the *koolharee, which he had in his hand*, when roused to fury by his bad language, at the close of the second dispute about the land, but he acknowledged that he had put it down in the interval between the first and second disputes.

2nd.—He said that he had made use of the expression "*Jey maha Kalee*," when he raised his axe to strike.

3rd.—He confessed that he had struck the woman Oolasee once, near her house, after driving away the mother of the deceased, and other females, whom he had found stealing *moong* in his field, on his way home.

4th.—He fully corroborated the evidence of the witnesses of apprehension and circumstance, in regard to the finding and identity of the *koolharee* placed before the court.

He added in the confession made before the officiating joint-magistrate, that the eye-witnesses were all cognizant of the second dispute, as well as of the murder; that the latter had once beaten his brother's wife, who was pregnant at the time, so severely with a *lattee*, as to cause miscarriage; that the dispute about the land was of long-standing; that he had intended to strike Oolasee with the back of the axe, but some how wounded her with the edge; that he refrained from striking her again, because she was a woman, and that she had been engaged in stealing his vetches, with the other females whom he found in his field. It is further worthy of remark, that the woman was pregnant when struck, that the eye-witnesses, who are all relations or servants of the deceased said, that the prisoner went off at first, in a direction contrary to that on which his home lay; that those of apprehension mentioned that the prisoner was the person said to have wounded Oolasee, when their first enquiries were made in the village, and that the statements of the two female witnesses Nos. 14 and 15, went far to support what the prisoner alleged in regard to the *moong* stealing.

The witnesses for the defence only spoke of the prisoner's right to the land in dispute. The deposition of the civil assistant surgeon shewed, that the death-wound was that on the right side of the neck of the deceased, which severed the arteries, and that the cut, received by the female, was but slight.

The *futwa* of the law officer convicted the prisoner of the murder of Kisto Dey, and declared him liable to *kissas*, but declared the charge of wounding not proven, in consequence of the discrepancy before the averments of Oolasee, and the confession of the prisoner.

I am of opinion that the murder and wounding were both fully and legally proven; that the object of the male prosecutor and eye-witness in deposing to the circumstances of the former, as they did, was to establish premeditation and thereby to secure the capital punishment of the prisoner; that they conspired with the prosecutrix to accuse his brothers of the wounding, with a

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view to getting them punished also, and that the confessions of the prisoner must therefore have been true in all their particulars. Such being the case, I would recommend that he be imprisoned for life. He pretty evidently received galling abuse and provocation, and I do not consider that the momentary premeditation, implied in the sacrificial expression "*Jey maha Kalee*,"* is sufficient to warrant capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. J. Money.) There is no material variance, in this case, between the facts stated by the prosecutor and his witnesses, relative to the attack on the deceased, and those admitted by the prisoner in his confessions. In the prisoner's thannah confession, after detailing his dispute with the deceased, he says, "I got very angry, Kisto Dey abused me, and turned his back upon me and continued arguing with Rummun Dey, and others. Taking advantage of the opportunity, I took this *koolharee* in my hand and calling out *Jye ma*† *Kalee*, (victory, O mother *Kalee!* or hail, O mother *Kalee!*) I first struck Kisto, a blow on the neck. From the force of that blow he fell to the ground, then I struck him another on the wind-pipe and he died." To the officiating joint-magistrate he says, "My body began to tremble with rage. There was a *koolharee* in my hand, calling out '*Jye ma Kalee*,' I struck Kisto Dey, a blow on the back of the neck. On receiving it, he fell in a sitting posture. I struck him again on the same place with the *koolharee* and he fell down. Whether I struck him again or not, I do not recollect."

We do not see any reason whatsoever for rejecting the statement of the prosecutor and his witnesses, that the prisoner brought the *koolharee* from the place where he had been cutting wood, and attacked the deceased from behind, while he was sitting down. The prisoner himself does not mention what interval elapsed between the dispute and the attack, but he admits in his first confession that the attack was not made immediately, and that he waited, until he caught his unfortunate victim at a disadvantage. His shout of '*Jye ma Kalee*,' which may be heard wherever sacrifices are offered to the goddess *Kalee*, sufficiently shows his determination to take the life of the deceased, and from the nature and position of the wounds inflicted, one on the back of the neck, one at the side and one on the throat in front, all of considerable depth, it would seem that he endeavoured to hack off his victim's head. Immediately after the murder, he pursued the prosecutor with the apparent intention of attacking him, and shortly before his apprehension,

* He probably used it as much as a Mussulman would have used the expression *bismallah*.

† Not *maha* as written by the sessions judge.

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expressed his determination to murder all the sons and brothers of the deceased. The provocation, which he received, appears to have been of the very slightest description, quite insufficient to palliate the atrocious crime, of which he has been guilty. We convict the prisoner of wilful murder, and seeing no circumstances of extenuation in the case, sentence him to suffer death.

The officiating joint-magistrate has committed the prisoner in a second count, on the charge of wounding Musst. Oolasee Tamolinee, the wife of the deceased. The prisoner, it seems, confessed that he had wounded the woman; but she herself and her witnesses declared that the statement was false; and that she had been wounded by his brothers. There was no evidence whatsoever against the prisoner except his own confession; and the judge has given no satisfactory reason for believing his unsupported statement in opposition to the woman's evidence. There was no ground, in our opinion, for the commitment of the prisoner on this charge; and, in any case, as the nature of the crime, the party injured, the time, place and circumstances of the occurrence, were all different from those of the crime charged in the first count, the commitment should not have been made in the same calendar.

PRESENT:

H. T. RAIKES, ESQ., *Judge*,
J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND GHUNESHAM DOSS BURNICK

versus

LOKHIRAM MANJHEE SOOBAH SANTHAL (No. 2,) AND BESAIE MANJHEE SANTHAL (No. 3.)

West-Burdwan.

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The prisoner Besaie released, two judges thought the evidence against

CRIME CHARGED.—1st count, having in the day-time of the 26th March, 1856, corresponding with 14th Choit, 1262, B. S., committed wilful murder of Radhasyam Burnick, brother of the prosecutor, Ghunesham Doss Burnick, with some pointed sharp instruments; 2nd count, being accessaries both before and after the fact; 3rd count, being privy to the above crime.

Committing Officer.—Mr. H. Rose, officiating joint-magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West-Burdwan, on the 28th July, 1856.

Remarks by the sessions judge.—The main circumstances of this case, as set forth in the deposition of the principal witness, Sreekanth Dey, No. 16, were as follows.

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him insufficient for conviction.

The prisoner Lokhiram convicted by two judges, on strong presumption, of being an accomplice in the murder of Radhasyam Burnick and sentenced to imprisonment for life in transportation.

The deceased, Radhasyam Burnick, had left his home, at Kasheepore, with the said witness, who is his brother-in-law, for the purpose of visiting his relations at the village of Lalgurh. On their return from thence, on the 14th of Choit or 26th of March last, they stopped to drink at the Daserbandh tank, which lies at the foot of the Pachete hill, at about 9 A. M., and saw four Santhals emerge from the jungle, as if for the purpose of bathing in the tank. On the deceased and deponent asking them whence they came, they said from the jungle, whereupon the former, observing that they were clothed in new *tusser dhotees*, remarked to his relative, that they wore clothes which they had plundered from the merchants of the jungle country. On hearing this, one of the Santhals, distinguished by his superior stature and matted hair, (viz., the prisoner, Lokhiram) became very angry, and ordered two of his party to seize and carry off the deceased, saying that his Rajahs, Anuntloll and Moneeloll, were in the jungle on the hill, and that he should not be released until he had made good his accusation in their presence. Upon this, the two Santhals, who had seized the deceased, dragged him away into the jungle, while the witness ran to the village of Pachete for assistance. When he returned to the tank with Thakoordoss Kur, witness No. 17, and others named with him in the calendar, no trace of the deceased, nor of the Santhals, could be discovered, but the witness, Purrown, (properly Pareo Manjhee, sent for by the sessions court for the prosecution, and named for the defence) No. 25, told him that the Santhal with matted locks, and another, had been searching for him. The body was found on the 3rd day after the disappearance of the dec ased, by the prosecutor and witnesses Nos. 16, 17, 18, 19 and 20, in a deserted chamber of a disused *mundir*, or place of worship, on top of the Pachete hill. It had a wound in the neck, which had passed through it, from side to side, and the left hand was nearly severed at the wrist, but there were no other marks upon the corpse, except a few bruises on the head, as if the deceased had been finished with stones. The clothes, a *dhotee* and *chaddur*, had been removed, a small cloth was tied round the wrist and between the legs. A silver waist chain, which the deceased wore when carried off was gone, *but his gold earrings*, were still in his ears.

The witness, Sreekanth, having accurately described the four Santhals he saw in the act of carrying off the deceased, the prisoner, Lokhiram, No. 2, was apprehended by the darogah, Sahibmeer Khan, witness No. 1, at the village of Bhoorporeabadee, not far from Pachete. He resisted, with a *lattee*, and was secured with difficulty. On searching his house, a *chuddar* and a *dhotee*, of which the latter was still partially stained with blood, though it had apparently been dipped in water to remove the

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same, were found and fully identified by the prosecutor, and the father of the deceased, witness No. 24.

The prisoner at once confessed, without compulsion, supporting the accuracy of the statements of the witness, Sreekanth, up to the removal of the deceased into the jungle, but alleging that the persons who removed him were Jussaee and Raeesen; that the prisoner, Besaie, No. 3, thereafter went from the tank towards the village; that he (confessant) remained on guard at the foot of the hill, by Jussaee's order for some time, and then, being frightened, went to his hut; that in the evening Jussaee and Raeesen came to him, and on his asking them, what they had done with the deceased, said that their Rajah had ordered them to slay him, because he was unable to prove his accusation of theft, made against them; that on confessant's young son asking Jussaee for the *chuddar* of the deceased, he presented him with it; that the *dhotee* found in his house was his own, the blood thereon being that of a goat, which he had sacrificed; that one Rashoo Manjhee Santhal knew this to be the case; that Jussaee and Raeesen went away, to pergunnah Purera, that night; that confessant remained two days at the hill and then went to Bhoorporeabadee; that he did not tell any one of Jussaee and Raeesen having slain the deceased; that he did not go up the hill; that he saw no Rajah nor Rajahs there; that he had resisted the darogah with a *lattee*, but did not know whom he had struck with it; that he had once been taken to the Rughoonathpore thannah, by certain Santhals, with the intention of delivering him up as one of their Soobahs, but had been released by them, because the darogah happened to be absent, and no order for his apprehension existed; that he had thereafter, gone to live at Sealee, from whence he was driven by the village watchmen, after they had mulcted him in a certain sum; that he then removed to Bhoorporeabadee, where he was apprehended, and that he had been made a Soobah, during the rebellion by Kanoo, who gave him the title of Nuddee Thakoor and a number of villages, upon the plunder of which, he subsisted.

Jussaee has not yet been apprehended and Raeesen, who was seized in the Jhurria pergunnah, was eventually released by the officiating joint-magistrate, for want of proof. The prisoner, Besaie, No. 3, was taken close to the house of Lokhiram in Bhoorporeabadee, and also at once confessed of his own free will. His statements were similar to those of prisoner No. 2, up to the removal of the deceased into the jungle, except that he declared Lokhiram to have been the person who gave orders on the occasion and who with Jussaee and Raeesen, forcibly carried him off; he then went on to say, that he (confessant) ran off towards the village for assistance after the witness, Sreekanth, No. 1, and a woman with a child in her arms, who had witnessed the altercation

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at the tank; that on the road he met Goverdhun chowkeedar, witness No. 19, and told him what had happened; that he and Purrown (or Pareo Manjhee) witness No. 25, went with him to the tank but found no one; that on the chowkeedar telling him to find the deceased and the parties who had removed him, he fled to his hut which was at the foot of the hill; that in the evening Lokhiram, Jussaee, and Raeesen, came home, and said they had let the Benia (deceased) go; that he did not see the murder; that he had seen the *chaddur* and *dhotee*, found in Lokhiram's house, on the person of the deceased; that the small piece of cloth, found tied between the legs of the corpse had belonged to Raeesen, and that he (confessant) formerly lived at Jamtara, but fled from thence to Seolee, when the rebellion failed. The above confessions were repeated with no material discrepancies in the foujdary court, at Mungulpore, and before me. Lokhiram No. 2, however, affirmed on the former occasion that the *chaddur* found in his house belonged to his son and added, on the latter, that he did not fly until the prisoner Besaie had brought the chowkeedar, Goverdhun, to the tank from the village of Pachete. The evidence of the apprehension of the prisoners, and the truth of the confessions in the mofussil and before the assistant joint-magistrate, the *sooruthal* finding of the property, and circumstances was all consistent and good, but it was evident on comparison of the several depositions given by the chowkeedar Goverdhun and Pareo Manjhee witnesses Nos. 19 and 25, that the former was anxious to save the prisoner Besaie and the latter the prisoner Lokhiram.

As both these witnesses for the prosecution were also named for the defence, it appears necessary to give an abstract of what they said, in explanation.

Goverdhun's statement in the mofussil was, that the witness Parrown and another young Santhal, whose name he did not know, had informed him that there was a dispute going on at the tank; that they did not say who were disputing; that when he went there with them, no one was to be seen; and that, then, both his companions, on pretence of going to fetch assistance, slunk off and left him.

On his examination before the assistant joint-magistrate, he was asked by the prisoner Besaie, on the 14th May, whether he had seen Lokhiram and himself before, and had had any conversation with them or not, his answer was that he had not. The prisoner then asked him whether he had said nothing to him about a man having been seized at the tank, and had not asked him to come and release him. He again answered in the negative. On the 16th of May, the prisoner Lokhiram asked him whether any one had called him to the tank, whereupon he pointed to the prisoner Besaie and said, that he had met him in the road from the hill to the Pachete village; that the said

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prisoner had told him that there was dispute at the Desbandh tank and taken him there; that no one was to be seen; that the prisoner afterwards went off on pretence of going to fetch assistance; and that the above conversation took place at noon. Before me he repeated what he had said before the assistant joint-magistrate in answer to the prisoner Lokhiram's question as above. When cross-examined, he said that the prisoner Besaie, was the young Santhal, he mentioned as having been met by him in company with Purrown Manjhee, in the mofussil; that he forgot to mention the said Purrown's presence before the assistant joint-magistrate and this court, by accident; and that Anuntloll and Mooneeloll were Rajahs who ruled Pachete in former times. Of the discrepancies in his deposition before the assistant he could give no explanation.

When the witness Purrown Manjhee was examined on the spot, he stated that he was not acquainted with the Santhal prisoners; that when going to get wood for sale on the morning of the murder, he met two Santhals, one of whom had *tusser* clothing and matted hair, and was of a black complexion, while the other was of a fair complexion *(shamburno)* with short hair; that they asked him whether he had seen a Benia any where, that when he said no, they went on (turned back) and deponent followed them; that after a little they met Goverdhun Chowkeedar, witness No. 19, to whom the Santhals said that they had had a quarrel with a Benia at the Desbandh tank, and that he must come and settle it; that when the collective party arrived at the tank, there was no one to be seen; that the tall Santhal then said that he would go and bring his people, and departed; that the other shortly followed him on pretence of seeing whether the said people were coming or not: that deponent then went home, leaving the chowkeedar at the tank; and that he thought the two Santhals must have slain the deceased. Before the assistant joint-magistrate he told nearly the same story, and when asked what he had to say in defence of the prisoner Besaie, replied that he had seen him on the boundary of a garden, near Pachete, on the day of the murder. His deposition before me was to the same effect, that he entirely left out the prisoner Lokhiram in his examination in chief, though he eventually admitted, after many unavailing attempts at evasion, that he had met him in company with Besaie.

The obvious inferences from the tenor of the above depositions appear to me to be, that the witnesses were favourably inclined towards the prisoners; that the mofussil statement of Purrown was true, those of the chowkeedar all more or less false, and that the prisoners had in fact, come to look for Sreekanth, after they had carried off and secured, or perhaps already slain, the deceased. If the latter was the case, the presumption is strong, that it was their intention to have put him to death also. The

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native doctor of Mungulpore Baboo Lokenath Ghose, who examined the body when it was considerably decomposed, described the wounds found on the corpse as above, but did not observe any marks of blows on the head, nor any other spear or knife-wounds on the body. The officiating joint-magistrate's observation in that regard (to be found in his abstract) was a mistake.

The *futwa* of the law officer convicts the prisoner No. 2, Lokhiram, of the wilful murder of the deceased Radhasyam Burnick, and the prisoner No. 3, Besaie, of being an accomplice in the crime, both on violent presumption and declares them liable to *sceasut* (or severe punishment including death, if necessary,) at the discretion of the Hakim, with reference to the fact of their being *Santhals*.

As I concur in this finding, it is my duty to refer the trial to the Nizamut Adawlut for their orders.

It is my opinion that the prisoner No. 2, Lokhiram Manjhee, ought to suffer capital punishment for the following reasons.

1st.—It has been proven, both by evidence and his own confession, that he participated in the violent removal of the deceased into the jungle, on the Pachete hill, from which he never returned alive.

2nd.—As he has fully admitted that he was made a Soobah or leader by the well known rebel Kanoo and was therefore, to all appearance, the chief of all the Santhals, in the Pachete jungle, who were at that time a numerous body, the presumption is most strong, that both the abduction and the murder were committed by his orders.

3rd.—It has been shewn that the Rajahs Anuntloll and Mooneeloll, were former Rajahs of Pachete and not existing leaders, so that his reference to them, when he ordered the deceased to be dragged away, was probably of a superstitious nature which conjecture receives a colour from the corpse having been found in the deserted *mundir* of the Pachete zemindar.

4th.—The slaughter of the deceased was similar to others of a like kind, which have frequently been perpetrated by Santhal Soobahs, or leaders in pretence of a deligated authority to try, condemn and execute.

5th.—His acts were instigated by atrocious fury at being accused of plundering the clothes he wore from the *mahajans* of the jungle country.

6th.—His youthful accomplice directly accuses him of having been one of the persons who forcibly carried off the deceased.

7th.—The clothes of the latter were found in his possession, were fully and satisfactorily identified and one of the articles bore stains of recent blood, for which he has not accounted, and

8th.—He resisted when apprehended.

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I am credibly informed that the fact of the gold earrings not having been removed from the ears of the deceased, when his clothes were taken, is a sign that he was robbed if not slain by *Santhals*, as that tribe consider it a crime to steal gold ornaments.

It appears to me that although the evidence for the prosecution and the signal failure of that for the defence, as well as his own confession have raised the most violent presumption that the prisoner Besaie, No. 3, was an accomplice in the murder of Radhasyam Burnick, I am of opinion that his youth and evident trembling subordination to prisoner No. 2, ought to save him from capital punishment, and that imprisonment with labor in irons for a long period will be an adequate one for his offence.

On careful consideration of all that has been stated, I hereby recommend that the prisoner Lokhiram, No. 2, be hanged, and the prisoner No. 3, imprisoned, with labor in irons in banishment from his own district of Beerbhoom. for fourteen years.

Remarks by the Nizamut Adawlut.—(Present : Messrs. H. T. Raikes, J. S. Torrens and C. B. Trevor.)

Mr. J. S. Torrens.—The judge has entered most fully and ably into the details of this case. I agree with him in the view which he has taken as to the guilt of the prisoner Lokhiram, No. 2, but as we have only his own admissions of the other prisoner against him, and as they do not show that he participated in the murder or decoying away the deceased into the jungle, I would release him altogether. The evidence I conceive to be quite clear as to Lokhiram being the person by whose act and influence the deceased was taken to the jungle for the purpose of being murdered as he was found to have been. The injuries inflicted on him are shown to have been of the most deliberate kind, only such as would have been resorted to with the intent to murder, and the evidence is as strong as it well can be without that of an actual eye-witness; that the murder could have been caused and committed by no other than the prisoner Lokhiram, with whom he was last seen, by whom he was indubitably taken away as described, and in whose house the cloth, which he is shown to have worn when he left home, was discovered. I would sentence him to capital punishment as recommended by the sessions judge.

Mr. C. B. Trevor.—The circumstances of this case have been so fully detailed by the sessions judge in his report that it is unnecessary to re-state them.

The prisoners have been charged with the wilful murder of Radhasyam Burnick, with being accessaries both before and after the fact to the murder and with privity to the crime.

The prisoners made, what are called, confessions, both in the mofussil, before the magistrate and before the sessions judge

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but in these statements they do not implicate themselves in the murder of the deceased.

Prisoner No. 2, acknowledges, to what amounts to privity to the murder. Prisoner No. 3, makes no statement involving himself in either of the crimes laid to his charge.

That the deceased died a violent death seems clear both from mofussil inquest and from the examination of the body made by the native doctor of Munglepore.

From the evidence on the record it is proved that prisoner No. 2, and two other Santhals, at the order of the prisoner aforesaid, carried off the deceased into the jungle on the Pachete hill, they being angry with him for having remarked in their hearing that they wore clothes which they had plundered from merchants of the jungle country; that after this abduction, the deceased was never seen alive; that on the third day after his abduction, the body of the deceased was found in a deserted temple on the top of the Pachete hill, with a wound in the neck passing through it from side to side and with the left hand nearly severed at the wrist. That the darogah, in consequence of the description given by witness No. 16, of the persons who had carried off the deceased, apprehended prisoner No. 2. at the village of Bhoorporeabadee; that on searching the house of prisoner No. 2, a *dhotee* and *chudder*, the former of which was, in places, stained with blood, were found, both of which were identified by his relatives as having belonged to the deceased. It appears that the prisoner No. 2, in his confession before the police acknowledged that the *chudder*, in question, had been given to his son by Jussaee, (who has absconded) on his asking him for it, whereas before the magistrate he varied his statement; he, however, before the judge again repeated that the *chudder* had been given to his son by Jussaee. The *dhotee*. prisoner No. 2, affirms, is his own, and that the blood thereon was that of a goat which he had sacrificed.

That portion of the evidence showing that the deceased had last been seen alive in company with prisoner No. 2, who with others after the use of threatening language towards him was dragging him into the jungle where his body was afterwards found, would alone have thrown strong suspicion on the prisoner No. 2, as being implicated in the murder of the deceased; coupled, however, as it is with the evidence as to the finding of property in his house, which has been, to use the words of the sessions judge, "fully and satisfactorily identified," as having belonged to the deceased, it connects the prisoner No. 2, with the act to a degree amounting to legal proof. I therefore convict the prisoner on strong presumption of being an accomplice in the murder of Radhasyam Burnick, and would sentence him to imprisonment in transportation for life.

The prisoner Bisaie, as there is no evidence against him

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of any sort, I agree with Mr. Torrens, in thinking is entitled to his release.

Mr. H. T. Raikes.—The judges who have referred this case for a third voice as to the sentence to be passed on Lokhiram, prisoner No. 2, have concurred in acquitting the other prisoner Bisaie. I have therefore only to consider such circumstances as relate to the guilt of Lokhiram, and the sentence to be passed on him.

I hold it may be safely assumed that the deceased, Radhasyam, was murdered and that his death may be attributed to those who, it is satisfactorily proved, carried him off in anger and with menaces; that the evidence which proves this much, proves also that there were two other individuals besides Lokhiram, prisoner No. 2, and Besaie, prisoner No. 3, and though there seems sufficient reason for entertaining a doubt as to Besaie, from his having actually participated in the murderous act, there seems to me no reason to suppose that the other two mentioned, were not as willing and as deeply implicated as the prisoner Lokhiram. This individual is therefore entitled to the benefit this doubt creates as to his being the actual perpetrator of the murder, though the facts proved, and the whole probabilities of the case, leave no sort of doubt in my mind that he was aiding and abetting the crime, I would therefore convict him of being an accomplice in the murder charged, and sentence him to transportation beyond sea for life.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

J. S. TORRENS AND C. B. TREVOR, ESQS.,

Officiating Judges.

GOVERNMENT AND ATEB MUNDUL

versus

Dinagepore.

KUNNI BIND (No. 4,) BHEEM BIND (No. 5,) CHUTTUN BIND (No. 6,) AND MEHERCHAND (No. 7.)

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The majority of the Court distrusting the

CRIME CHARGED.—1st count, dacoity in the house of Ateb Mundul, and plundering therefrom property valued at Rs. 3-11-3; No. 4, 2nd count, having possession of plundered property obtained by dacoity, knowing it to be such.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 2nd June, 1856.

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mofussil confession of the prisoners Nos. 5, 6 and 7, and being of opinion that the evidence on the record was insufficient for their conviction, order their immediate release. The sentence passed against prisoner No. 4, was confirmed, the evidence against him being conclusive of his guilt.

Remarks by the sessions judge.—This case was tried under Act XXIV. of 1843. On the night of the 12th of January, 1856, a gang of dacoits attacked the prosecutor's house, got within the *outer* enclosure and were then repulsed by the prosecutor and his friends.

The prosecutor received a severe blow and the prisoner No. 4, "Kunni Bind," was knocked down and seized with some "*thalees*" and other utensils, which he is said to have got hold of at the "*dihori*" or entrance-gate. He pretended to be dumb, but answered questions as to the number of his accomplices, where they had come from, &c., by signs. He went some miles to the huts in which he and his accomplices had lived when employed in cutting paddy, then went to Rahunpore, a large grain-mart on the border of the Dinagepore and Maldah districts, where the police collected all the men of his *jat* (Bind similar to Dangur) and he selected as his accomplices the prisoner No. 7, "Meherchand," and Ramshurrun *alias* Goorooa, who subsequently escaped. He then went to an indigo-factory on the Ganges in Maldah, pointed out the prisoners Nos. 5 and 6, Bheem and Chuttun, and is said to have made signs as to pointing out more, when a hint from one of the factory men put a stop to his doing so. When returning to the prosecutor's house, he pointed out a bamboo tope where he and his accomplices had provided themselves with "*lattees*." Before the magistrate he nodded assent to questions regarding himself and accomplices and after treatment under the civil surgeon (a blister on the throat) took to speaking again. The prisoners Nos 5, 6 and 7, Bheem, Chuttun and Meherchand, confessed in the mofussil and the evidence to their having done so appears to me clear and satisfactory. Before me two of them stated that they were forced to confess in the mofussil to avoid having foul flesh and filth put into their mouths. The other pleads the same threat, but declares that he did not confess, though he cannot say what the darogah may have written. Against the prisoner No. 4, Kunni, there is ample evidence and he did not name any witnesses to his defence; that he was found drunk on the road near the prosecutor's house and beaten, until he lost the power of speech. He attributes his having pointed out the other prisoners as his accomplices to his having been beaten by the police. He states, apparently in support of the defence of the other prisoners, that he was out of caste and that he and Goorooa (absconded) only left home to cut *dhan*. It is, however, clear that all the prisoners lived near each other on the Ganges and that they all came to the Dinagepore district, near the prosecutor's house. The other prisoners plead enmity on the part of the prisoner No. 4, "Kunni," who was ousted from his caste and that they returned home before the date of dacoity. The evidence of their witnesses is contradictory and unsatisfac-

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tory and the apprehension of the prisoner No. 7, "Meherchand," and Gooroos (who absconded) in Rahunpore is not accounted for by them or by the prisoners. I am perfectly satisfied from the evidence, confessions and the circumstances under which the prisoners were apprehended, that they are all guilty.

Sentence passed by the lower court.—Imprisonment for seven years each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. S. Torrens and C. B. Trevor.)

Mr. J. S. Torrens.—There is no doubt in this case, of the dacoity on the house of the prosecutor, as it is clearly established on the evidence that the prisoner No. 4, Kunni, was seized in the act. The judge, who heard the witnesses and prisoners examined, says, "I am perfectly satisfied from the evidence, confessions and circumstances under which the prisoners were apprehended, that they are all guilty." I quite agree in this view. Of the guilt of the prisoner, Kunni, there can be no doubt; he at first resorted to the contrivance of feigning dumbness, to avoid disclosure of those who had escaped at the time of his seizure, but he afterwards denounced the other prisoners, who, on their capture, also confessed before the darogah. There has either been on the part of that officer, a most deliberate conspiracy to found a false accusation on the grounds of the capture of the prisoner, Kunni, and entire false representation on his part and those who accompanied him, as to the journey he made in quest of the other prisoners, and of what occurred at the time of their confessions having been taken, or there is a most praiseworthy activity on part of the darogah in tracing out the other prisoners, and the discovery of all the circumstances as to the mode of livelihood of the prisoners, their association with Kunni and other matters. It is no doubt as a general rule most unsafe to rely on mofussil confessions; but when all the circumstances of a case warrant the belief that they are true, there is no reason for their being totally rejected. This is a case in which every circumstance, down from the capture of Kunni, prisoner No. 4, in the act of dacoity, to the end, lends support to the truth of those confessions, and though they are denied afterwards before the magistrate, I fully credit them. I would uphold the sentence of the sessions judge.

Mr. C. B. Trevor.—This is an appeal from prisoners Nos 4, 5, 6 and 7, who have been sentenced to imprisonment with labor and irons for seven years for dacoity.

It appears that prisioner No. 4, Kunni Bind, was seized in the act of committing the dacoity; he at first feigned dumbness and it was only after treatment by the civil surgeon that he regained the use of speech; by signs he signified to the darogah, that he would point out the rest of the gang; he first led the darogah to Enautpore, where the darogah reports he pointed

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out some huts which had been occupied by a party of Binds, who had come to cut the crops and had left the day *after* the occurrence of the dacoity; he then took the darogah to another place, where he pointed out prisoner No. 7, and then he took the darogah across a branch of the Ganges, forty miles to Ramkistopore, in the Maldah district, where prisoners Nos. 5 and 6 were pointed out by him as accomplices in the dacoity. As regards prisoner No. 4 himself, the evidence as to his apprehension at the time of the commission of the dacoity is conclusive, and there seems to me to be no reason for interfering with the sessions judge's sentence, regarding him; as to the other prisoners, there are mofussil confessions said to have been made by them, though they were repudiated by them both before the magistrate and the sessions judge; these confessions are not attested by parties living in the neighbourhood of the places at which they were severally made, but by persons who live close to the prosecutor's house, who are represented as having followed the darogah wheresoever he went, and who are in short witnesses to nearly every fact entered in the calendar of commitment. Moreover, these confessions are not corroborated by any evidence on the record. It is true the darogah mentions having heard that a party of Bheems, left certain huts, pointed out to him by the prisoner No. 4, the day *after* the occurrence of the dacoity; but the fact itself is not proved in evidence; neither is there any evidence connecting the prisoners Nos. 5, 6 and 7, with those Bheems.

Under these circumstances, I am of opinion that the evidence against prisoners Nos. 5, 6 and 7, is insufficient for conviction and that they are entitled to their release.

Mr. H. T. Raikes.—The judges, before whom this case first went, have concurred in upholding the conviction of the prisoner Kunni, No. 4; their difference of opinion only relates to the other three individuals Bheem, Chuttun and Meherchand.

These men were pointed out by Kunni, as his accomplices, and are said to have confessed their guilt to the darogah.

They, however, repudiated their confessions as soon as they were brought into the presence of the magistrate and pleaded *not guilty* before the sessions judge.

Their confessions are entirely uncorroborated, but the sessions judge observes: "I am perfectly satisfied from the evidence, confessions, and the circumstances under which the prisoners were apprehended, that they are all guilty." As the evidence only affects Kunni, it cannot touch the case of the present prisoners I am dealing with. Their confessions purport to have been given on the same day on which the prisoners are stated in the calendar to have been apprehended, but even this cannot be depended upon as the fact. Meherchánd was apprehended by the darogah at Rahunpore, nineteen miles from the village

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where the dacoity happened, and Bheem and Chuttun, at Ramkistopore, forty miles further off in the Malda district, while the confessions are taken down at the place where the offence occurred and ten days after the occurrence. It is obvious that the prisoners were several days in the hands of the police before their alleged admissions of guilt were reduced to writing. The subscribing witnesses to these confessions are, as remarked by Mr. Trevor, the same witnesses that depose to every fact to which evidence is tendered throughout the enquiry and the sessions trial.

I cannot feel the same confidence in the confessions, nor in the circumstances leading to the prisoners' apprehension as to concur with the sessions judge in regarding them sufficient to prove the prisoners' guilt. I concur therefore with Mr. Trevor, in acquitting them.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND RAMGUTTY GOPE

versus

BROJO BASSY ALIAS BROJOO PAUL (No. 2,) AND MUSST. BHYRUBEE (No. 3.)

Tipperah.

1856.

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Case of BROJO BASSY *alias* BROJOO PAUL and another.

The prisoners Brojo Bassy *alias* Brojoo Paul and Mussumut Bhyrubee, were committed for trial for the wilful murder of Mussumut Ooma, and the sessions judge released the first prisoner

CRIME CHARGED.—No. 2, 1st count, wilful murder of Musst. Ooma, sister of the prosecutor; 2nd count, administering deleterious drugs to Musst. Ooma, with a view to procure abortion, which caused her death; 3rd count, procuring the administration of deleterious drugs to Musst. Ooma, with intent to procure abortion. No. 3, 1st count, wilful murder of Musst. Ooma, sister of the prosecutor; 2nd count, administering deleterious drugs to Musst. Ooma, with a view to procure abortion, which caused her death.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 13th September, 1856.

Remarks by the sessions judge.—The prosecutor is the deceased woman's brother. He stated that his sister, a widow of seventeen or eighteen years of age, had carried on for some months an illicit connection with the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) by whom she became pregnant. On the Sunday morning preceding the Wednesday on which she died, the prisoner Musst. Bhyrubee, (No. 3,) came to the house

and administered some drug in hot water to the deceased, stating that she did so at the prisoner, Brojo Bassy *alias* Brojoo Paul's, (No. 2,) desire. She returned in the course of the same day and gave the deceased a second dose, which appears to have been speedily followed by burning pains in the abdomen. The woman survived until Wednesday morning, when she expired from the effects of the drugs thus administered to her, and the prosecutor gave immediate information of her death at the thannah, which was close at hand.

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The magistrate observes in his abstract of the case that the mother, sister, and two brothers, knew that the drugs had been given to the deceased, and they would have been committed to take their trial for their share in the transaction, were it not that the case could not have been proved without their testimony. One brother is therefore made the prosecutor, and the mother, sister and younger brother, appear as witnesses to the fact.

The prisoners pleaded *not guilty*.

The mother, Musst. Doorlubee, (witness No. 11,) while avoiding in the first instance in my court the admission she had made to the magistrate of having actually *seen* the medicine given to her daughter, deposed to its administration twice by the prisoner Musst. Bhyrubee, (No. 3,) and to the result being death on the morning of the fourth day following. The expulsion of a fœtus is not clearly deposed to, but allusion is made to a flow of blood from the womb. The body was so decomposed that the civil assistant surgeon found it impossible to effect a *post-mortem* examination, but the stomach was sent to the chemical examiner at Calcutta, who reported that he had failed to discover any poisonous substance among its contents.

Musst. Shumpoornah, (witness No. 12,) and the sister of the deceased, deposed to having seen the prisoner, Musst. Bhyrubee, (No. 3,) administer some drug twice to the deceased at the desire, as she stated, of the prisoner Brojo Bassy *alias* Brojoo Paul, (No. 2,) in order to effect abortion, the consequence of which was her sister's death. The prisoner Brojo Bassy *alias* Brojoo Paul, (No. 2,) is stated by this and the preceding witness to have visited the deceased after the administration of the second dose, and to have encouraged her by assurances of recovery.

Gungaram Ghose, (witness No. 13,) is the deceased woman's younger brother. He saw the first dose of medicine administered by the prisoner, Musst. Bhyrubee, (No. 3,) and was present when the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) visited the deceased in the course of the afternoon, and bade her be in no alarm.

The above witnesses, the mother, sister and brother of the deceased, were in evident fear throughout their examinations of

but disagreeing with the law officer who would release her, found the woman Mussumut Bhyrubee guilty of having administered certain deleterious drugs to the deceased for the purpose of causing abortion, in consequence of which death ensued, and recommends her to be sentenced to 7 years' imprisonment with labor suited to her sex.

The Court was of opinion that there were strong grounds for thinking that the whole case was a fabrication against the prisoner, distrusting therefore the evidence in the case against her, it acquitted her of the crime laid to her charge and directed her immediate release.

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possibly committing themselves as *particeps criminis*, which I fear they unquestionably were, and this apprehension led to some discrepancies between their evidence in my court and in that of the magistrate. But making allowances for this fear of self-crimination, it appears sufficiently consistent on the main points of some deleterious drug having been administered on two occasions on the same day by the prisoner, Musst. Bhyrubee, (No. 3.) in consequence of which the patient died.

No. 18, Gopeenath Gope.
„ 19, Rajchunder Gope.
„ 20, Kassynath Gope.

Saw the deceased a few hours before her death, having been informed that she was seriously ill in consequence of drugs administered to her to cause abortion. They were aware of her connection with the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2.)

The prisoner, Brojo Bassy *alias* Brojoo Paul's, (No. 2,) defence was a denial of any improper intimacy with the deceased, or of having caused the administration of any medicine to her. He attributed the charge to hostility on the part of the prosecutor whom he had refused to supply with goods from his shop, a point he proposed to establish by evidence.

The defence of the prisoner, Musst. Bhyrubee, (No. 3,) was a simple denial with a similar plea of ill-feeling on the part of the prosecutor.

Two witnesses only were examined by the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) the prisoner, Musst. Bhyrubee, (No. 3,) declining to have her witnesses called into court.

The Mahomedan law officer acquitted both prisoners, chiefly on the ground of the evidence against them being contradictory.

I agree with him as regards the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) for the following reasons.

The evidence connecting him with the charges set forth in the indictment is derived from the mother, sister and brother of the deceased woman, who stand themselves throughout the case in a very questionable position. They say that the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) came to their house after the administration of the medicine and encouraged the deceased with hopes of recovery, and that the prisoner, Musst. Bhyrubee, (No. 3,) when bringing the drugs to their house informed them that she did so at the desire of the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2.) Such is the extent of their evidence which especially, with reference to the quarter from which it is derived, appears to me insufficient to justify a conviction of the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2.) It is very likely, in spite of his denial, that the deceased woman was pregnant by the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) and it seems quite certain that she died

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in consequence of some drug administered to her by the prisoner, Musst. Bhyrubee, (No. 3.) But it is possible, and even very probable, that her own relations resorted to the measures with which they now charge the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) in order to avoid the family discredit and exposure which must have ensued on the daughter and sister's frailty becoming known. Receiving therefore their evidence on *this* point with distrust, I deem it insufficient to establish the guilt of the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) who may have been the cause of the woman's pregnancy without contemplating or having had any connection with the further and more serious crime with which he now stands charged.

In accordance therefore with the *futwa* of the Mahomedan law officer, I acquit the prisoner, Brojo Bassy *alias* Brojoo Paul, (No. 2,) and direct his release.

As regards the prisoner, Musst. Bhyrubee, (No. 3,) I am of opinion that the evidence is sufficient to convict her of having administered certain deleterious drugs to the deceased with the purpose of causing abortion, in consequence of which death ensued, and as this is a crime most offensively prevalent in this district, I would recommend that, if convicted by the superior Court, she should be sentenced to seven years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) In this case two parties were committed by the magistrate to the sessions court, Brojo Bassy *alias* Brojoo Paul, and Musst. Bhyrubee, for the wilful murder of Musst. Oma, the sister of the prosecutor, and other charges.

The evidence attempted to prove that the drug administered to the deceased woman, by prisoner No. 3, Musst. Bhyrubee, was administered at the desire of prisoner No. 2, Brojoo Paul, with whom the deceased had an intimacy and by whom she was pregnant. The law officer and judge agreed in opinion that the evidence was insufficient against Brojoo Paul, and he was released; in commenting upon the circumstances of the case, as regards the released prisoner, the judge remarks "that it is very likely in spite of his denial that the deceased, Oma, was pregnant by the prisoner Brojoo Paul, and it seems quite certain that she died in consequence of some drug administered to her by the prisoner, Musst. Bhyrubee; *but it is possible and even very probable* that her own relations resorted to the measures with which they now charge the prisoner, Brojoo Paul, in order to avoid the family discredit and exposure which must have ensued on the daughter and sister's frailty becoming known." Nevertheless on the evidence alone of the mother, sister and younger brother of the deceased, witnesses Nos. 11, 12 and 13, parties, who on the judge's appreciation of the probabilities of

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the case, are equally, if not more, guilty than the prisoner, Musst. Bhyrubee herself, he, differing from the law officer, convicts this prisoner No. 3, of having administered certain deleterious drugs to the deceased with the purpose of causing abortion, in consequence of which, death ensued; and recommends that she should be sentenced to seven years' imprisonment with labor suited to her sex. This case, *as it comes before the Court*, is one of those, in which the proof of the crime is not separable from that which applies to the discrimination of the party who committed it, and in which, if we reject the evidence as regards the administration of the drugs, the evidence of the occurrence of the crime itself, of which the prisoner has been found guilty by the sessions judge, will not be sufficient for its establishment. We entirely agree with the sessions judge, in his estimate of the probabilities of the case as stated by him in the extract of his report above cited; and whatever suspicion may be attached to prisoner No. 3, we reject altogether the evidence of the witnesses Nos. 11, 12 and 13, against her as to the administration of the drugs. Moreover in the first statement given at the thannah by the prosecutor, he says that no one knew any thing of the administration of the drugs, until the deceased revealed it a little time before her death, which she did to witnesses Nos. 18 and 19. Distrusting then, the evidence in the case against the prisoner, we acquit her of the crime laid to her charge; and direct that she be immediately released.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, Esqs.,
Officiating Judges.

GOVERNMENT AND DOMOHOO KONCH GORO BOORA

versus

MUSST. DOOMNI KOOCHONEE (No. 1,) AND KUTTANG KONCH (No. 2.)

Assam.

1856.

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Case of Musst. Doomni Koochonee and another.

Crime Charged.—No. 1, wilful murder, by administering poison to Mashkowa, No. 2, accessary before the fact of the above crime.

Committing Officer.—Lieut. B. W. D. Morton, officiating magistrate of Durung.

Tried before Major Hamilton Vetch, deputy commissioner of Assam.

Prisoner No. 1, found guilty

Remarks by the deputy commissioner.—It appears from the deposition of Domohoo, on the part of the prosecution, that his

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of murder by poisoning and sentenced, under all the circumstances of the case, and in consequence of her youth, in accordance with the recommendation of the Deputy Commissioner, to imprisonment for life with labor suited to her sex. Prisoner No. 2, sentenced to 14 years' imprisonment with labor in irons as an accessory before the fact.

son, the deceased Mashkowa, had only very lately married the prisoner Musst. Doomni No. 1, and that the consummation of the marriage had been hastened in consequence of an alleged attachment between her and a neighbour of the name of Habang, in order to remove her from his influence. That the deceased, Musst. Doomni, with her mother, went to visit the house of the latter, where they stayed one night, and, on their return home the following afternoon, prosecutor and the deceased eat their dinner together; the next day, all the family with the exception of the deceased who was out, dined off the food, which had been cooked for them; in the afternoon the deceased came in, when the prisoner gave him some rice and vegetables *(bangons)*, shortly after partaking of which, he was taken ill, he writhed about and vomited a yellow fluid, and died before the close of the day; at the time deponent questioned the prisoner Doomni, No. 1, as to what had caused the deceased's death, she replied she did not know; but, on being again questioned next day, she said, when at home with her mother, the prisoner No. 2, Kattang gave her some poison to give to her husband, and told her that when he was dead she would then be able to have his nephew Habang, for which object she mixed the poison with the "*bangons*" of which deceased partook and died. On hearing this confession, he called his neighbours, in whose presence, she repeated it; after this he gave notice at the Korriaparah thannah. The police amlah and a native doctor came and examined the corpse, and sent it into the station of Tezpore.

The prisoner pleaded *not guilty*.

Before the police the prisoner, Musst Doomni, confessed that she administered poison to the deceased from which he died, and that having been on a visit to her, she, on her return, met the prisoner No. 2, Kattang who gave it to her for the purpose; she arrived at home that evening, but had no opportunity of giving it, but the next day when cooking some "*bangons*" she mixed it with them and gave to her husband the deceased, who eat the whole, and died in two hours: when first questioned by Domohoo, the prosecutor, she denied; but on the following day when asked by her mother, she confessed and said she had got the poison from Kattang, and by his advice gave it to the deceased, this she repeated to the prosecutor and neighbours, and when questioned, told them that she had mixed it with the vegetables, that her object was to get rid of her husband, in order to have Habang, for whom she had a passion.

In the foujdary she denied having administered the poison knowingly, saying, the prisoner Kattang gave it to her as medicine and as such she gave it to the deceased mixed in vegetables (*bangons*) and before the same court, in her defence, denies having confessed more at the thannah, and adheres to

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her story of having got the drug from the prisoner, No. 2, but only as medicine, which he told her to administer to the deceased with his vegetables *(bangons)* and that she would benefit thereby, and that she had acted on his advice; that it was on her husband's death that she suspected that it was poison; that the prisoner, No. 2, had himself put it into her hand; that she never asked for it; that No. 2, wished to have h r for his nephew Habang, for whom she had felt a great desire; that she had cooked the *bangons* given to the deceased separate from those of which the rest of the family partook.

The prisoner, No. 2, Kattang, denied before the police that he had ever given any poison to Musst. Doomni, to kill the deceased, but admitted, whilst he was bathing in the river, having left his *gumcha* on the bank, she came and untied it, and took out a bit of poison and was carrying it off when he called to her, and asked her why she had taken the poison from his *gumcha*, she replied that she required it; this poison he had begged from a Booteah.

Before the foujdary he made a similar statement, and, in his defence before that court, said he was a tiger-hunter; that he had purchased the poison from the Booteahs and kept it in his *gumcha*, from which No. 1, took it, as has been already stated; does not know of her having a passion for his nephew Habang; that he warned her not to take the poison, and names three witnesses to prove this.

Baboolla, 1st witness—Deposes to having heard of deceased's death the evening it occurred, and that early the following day the prosecutor called him, together with Sokhomooda, Gonnock Konch, Andhoo, Baloo Kowa and Syan, to come and question Musst. Doomni, respecting Mashkowa's death; they did so, when she replied, that, when at her mother's, Kattang had given her some bruised poison to administer to deceased, and that she gave it to him mixed with his vegetables *(bangons)* and that he had died in consequence. That Kattang had told her that by killing her husband, she would get Habang in his place; after hearing this statement, prosecutor gave information at the thannah whence the darogah came, and having examined the corpse forwarded it to Tezpore The darogah also questioned the prisoner, Musst. Doomni, when she repeated what she had previously stated, when asked what she meant by saying Kattang had given medicine and how came it that it had caused death, she said it might have been poison. The deceased had not previously been ill, but on examining the body, from the throat to the chest and tongue was black, there were no other marks.

Syan, 2nd witness—Deposes to the same purport as the foregoing witness, only makes no mention of the state of the corpse.

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Balook Kowa, 3rd witness.—The same as witness, No. 1, with the addition of having heard of it reported, that Musst. Doomni and Habang had criminal intercourse before the marriage.

Andhoo, 4th witness.—The same as the foregoing except to seeing the corpse.

Sokhomoonda, 5th witness.—To the same effect as the witness Balook Kowa, No. 3.

Gonnock, 6th witness.—As above, but does not advert to the use of the word medicine.

Loddun, 7th witness.—To the confession before the police, when Musst. Doomni first made use of the word medicine, and after admitted that it might have been also to the *sooruthal.*

Suzooram, 8th witness.—To the same effect as the foregoing, excepting that he does not speak to the state of the corpse.

Rungphool, witness No. 9, native doctor.—Deposes that he went with the police mohurrir and examined the corpse; saw no wound, but found from the face to the waist, as well as the back, black; questioned the neighbours, from whom he heard that deceased had had a burning sensation, and that his feet and hands were drawn up; is of opinion that the deceased died from the effects of poison; heard the prisoner No. 1, Musst. Doomni, state that she had given deceased a piece of poison the size of a seed of *kulaie* with *bangons*, after eating which, he died.

Witnesses for the defence.—The witnesses called by the prisoners in their defence state that they know nothing.

Verdict of jury—The jury were unanimous in convicting the prisoner, Musst Doomni, of culpable homicide, while two out of three of the jurors acquit the prisoner Kattang altogether, and the third convicts him of being an accessary before the fact to the wilful murder,

Opinion of the magistrate.—The magistrate considered Musst. Doomni guilty of culpable homicide and is of opinion, that as she is a mere child she was instigated by some one, and that Kattang was the man; he recommends that Musst. Doomni be sentenced to (7) seven years' imprisonment with labor suited to her sex, and that Kattang, be sentenced to like term of imprisonment with labor and irons.

Opinion of deputy commissioner.—It is perfectly clear from the evidence that the deceased died from the effects of poison; that this poison was mixed with his food and thus administered to him by the prisoner, Musst. Doomni, has throughout been admitted by her. The only questions are, was she at the time aware that the substance was poison, and did she administer it with the intent to take the life of the deceased? that she was, and did administer it with that intent, and that in order to admit of freely indulging her passion for Habang, is, in my opinion, proved by her confessions before her father-in-law, and

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the assembled neighbours, as well as before the police. I am therefore constrained to differ from the jury and the magistrate, who found her only guilty of culpable homicide, and I find her guilty of the crime charged, wilful murder by poisoning.

That she obtained the poison through the prisoner, Kattang, has been admitted by him, he saying she took it from his *gumcha* or napkin, in which it was tied and which he had left on the bank when he was in the river bathing, and although she maintains he put it into her hand with directions how to administer it, there is no evidence to support this, her allegation. The proof against him is therefore limited to his own admissions, that he had poison in his *gumcha*, and that he saw her take it, and remonstrated against her doing so, saying that she told him she had use for it. I think the circumstances of his carrying poison about his person at a time so opportune, his having used no personal exertion to recover it from the prisoner, Doomni, and not mentioning the circumstance to any one, and further, it appears most improbable that he should have been ignorant of the attachment between her and his nephew, all combined afford, to my mind, a violent presumption that he connived at the girl obtaining the poison which belonged to him, knowing the purpose to which she intended to apply it; I therefore convict him of being an accessary before the fact as charged.

The prisoner, Musst. Doomni, is entered in the proceedings as twenty years of age, whilst the magistrate in his letters* states that she appears to be a mere child not above fifteen years old. I, myself, judging from her appearance, consider her about fifteen or sixteen years' old, and think there is reason to infer, that one, so young and simple-looking, could scarce have planned and carried into execution so terrible a crime as that of which she stands convicted, without the advice of some one older than herself; this seems the more probable from the precaution taken by mixing the poison with vegetable food made of the "*bangons*" which would effectually prevent its being detected by the colour. Taking this and her youth into consideration, I would not recommend capital punishment; but that she be imprisoned for life with labor suited to her sex. The prisoner No. 2, Kattang, I recommend for a sentence of (14) fourteen years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C B. Trevor.) We agree in the sentence recommended by the deputy commissioner with respect to both the prisoners. The guilt of prisoner No. 1, Doomni, is clearly brought home to her on the evidence, as well as by her own confession before the police, and her admissions throughout.

* Dated 7th May and 30th June, Para. 2nd.

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It is clear also, according to the admissions of the prisoner Kattang, No. 2, that the poison, with which the murder was committed, was obtained by Doomni from him; and looking to all the circumstances of the case, to the knowledge which he is shewn to have had of the young woman's dislike to her husband, and her desire to effect a union with his nephew, for whom her passion was notorious in the village, we conceive that a guilty knowledge of the purposes for which the girl required the poison, may be inferred on part of the prisoner No. 2.

PRESENT:

H. T. RAIKES, ESQ., *Judge*,

E. A. SAMUELLS, AND D. J. MONEY, ESQS,

Officiating Judges.

GOVERNMENT

versus

APPOOCHAH CHOWKEEDAR.

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A chowkeedar convicted of culpable homicide, imprisoned for 14 years.

CRIME CHARGED.—1st count, with the culpable homicide of Jattri Aurut; 2nd count, with striking Jattri Aurut on the right temple with a *lattee*.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bogra.

Tried before Mr. R. H. Russell, sessions juge of Rungpore, on the 1st September, 1856.

Remarks by the sessions judge.—It appears that the prisoner, Appoochah Chowkeedar, went out with Shureeutoollah, witness No. 1, and Shufrah and Asruf, witnesses Nos. 4 and 5, to fish in a piece of water near the house of witness No. 1, on the night of the 22nd May. The prisoner came back for a basket to put the fish in, and Shureeutoollah states that not being able to account for his delay in returning, he went along the water-course to look at the fishing nets, when he heard his wife call out, and going to the house was trying to fasten the *tatty* which served as a door to the house, when the prisoner kicked against it with such violence as to throw him backwards into the court-yard. His mother by adoption (deceased) went to raise him, when the prisoner with a bamboo which he found in the verandah, used for fastening the *tatty*, struck her a blow on the right temple, from the effects of which, she fell down dead.

No. 1, Shureeutoollah.

Gyenah, witness No. 2, deposes, that the prisoner came into the room in which she was sleeping, and laid his hands upon her, she started up with a cry, when he told her to hold her

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tongue, from which she recognized him to be Appoochah, and calling out his name, her husband came and tried to secure the door, when the prisoner kicked against the *tatty*, knocked down Shureeutoollah, and on his mother going to raise him up, struck her a blow, on her right temple with a *lattee*, from the effects of which blow she died immediately.

No. 3, Khisto Aorut.

Khisto Aorut, witness No. 3, wife of Shufrah No. 4, whose house adjoining, gives a similar account of the assault on Shureeutoollah and deceased.

No. 4, Shufrah.
" 5, Asruf.

Shufrah and Asruf, witnesses Nos. 4 and 5, came up soon afterwards, and saw the body of deceased lying in the court-yard. The prisoner pursuaded them to say nothing about the matter, and the next day the body was buried, it being given out that deceased had died of cholera.

No. 6, Haroo Chowkeedar.

Haroo Chowkeedar, witness No. 6, however, happened to meet Shureeutoollah on the road, on the following Sunday, and seeing him to be downcast, asked the reason, when he told him his mother had died; the next day Shureeutoollah went to his (witness's) house, and on being further questioned by him, said she had been killed by the blow of a *lattee*. He therefore went to give information to the darogah and the mohurrir was sent to investigate the case, who elicited the facts above related.

It was not till the 29th, however, that the body was exhumed, it was then found that there was a contused wound over the right temple which is so far a corroboration of the statement of the witnesses, but the body was in so advanced a stage of decomposition, that the medical officer was unable to give any opinion as to the cause of death before the joint-magistrate. It was not considered therefore by myself or the law officer, necessary to call him.

There appears to be no reason to discredit the evidence given, which is supported by the appearance of the body when exhumed. It is stated that deceased was laboring under no disease, but a blow on the temple it is well known may prove fatal to a perfectly healthy subject. Deceased was advanced in years, being represented to have been upwards of sixty.

Opinion of the law officer.—The law officer considers the evidence to be insufficient under the Mahomedan law for conviction on the count charged, but finds the prisoner guilty of having caused the death of the deceased, on strong presumption, and declares him to be liable to discretionary punishment.

This would seem, in effect, to be a verdict of culpable homicide, on strong presumption, but as the law officer does not find the prisoner guilty in the terms of either of the counts of the charge, I do not know that I can pass sentence upon it.

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Opinion of the sessions judge.—I find the prisoner guilty of culpable homicide, but his offence (taking the circumstances of the case into consideration, and that he, as the chowkeedar of the village, was bound to preserve the peace instead of violating it, and to report any crime committed, instead of being the instigater of its concealment,) seems to merit a heavier punishment than it is in my power to award.

Recommendation of the sessions judge.—I would recommend that he be sentenced to fourteen years' imprisonment with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, E. A. Samuells and D. J. Money.)

Mr. E. A. Samuells.—The evidence of the prosecutor and the eye-witnesses in this case is clear, natural and consistent. It is fully corroborated by the testimony of the medical officer, and the witnesses present at the inquest, who depose to the existence of a contused wound on the spot where the witnesses had previously stated that the prisoner struck the deceased with his *lattee*.

The prisoner's defence failed so entirely in the magistrate's court, that he called no witnesses in the sessions. The case has been tried by a judge whose proceedings in criminal trials, we have previously had occasion to observe, are conducted with great care and judgment. The law officer has concurred with him in convicting the prisoner, although as the Mahomedan law does not admit of the testimony of women, and, with the exception of the prosecutor, all the eye-witnesses in this case are women, his conviction is necessarily founded on presumption instead of direct proof.

The only objections which have been made to the case for the prosecution are the improbability of the prosecutor consenting to hush up a case in which his step-mother had been murdered, and an attempt had been made to debauch his wife, and a single discrepancy in the evidence of the witnesses who depose to having reached the spot immediately after the occurrence, seen the body of the deceased and heard the particulars of the murder.

If we had the same local knowledge as the judge, and had had the same opportunities of judging of the characters of the prosecutor and the prisoner, the improbability alluded to would, in all likelihood, be found to have no foundation. Instances of persons consenting to forego the prosecution of those who have committed the most serious injuries on their persons or properties are within the common experience of every magistrate in this country; and to set aside the strong direct evidence which we have in this case, merely on the ground of the vague suspicion engendered by conduct of this kind on the part of the prosecutor, would, in my opinion, establish a very dangerous

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precedent. The prosecutor appears to be a timid poor-spirited creature, and was probably afraid of the prisoner, who is a man of bad character. The discrepancy in the evidence of the two witnesses, which has been pointed out, is quite immaterial. Before the magistrate, they said they had seen the wound on the head of the deceased. Before the sessions court, they said that they had not seen it; the probability being that as the occurrence took place at night and they had not an opportunity of examining the body closely, they had no very settled idea whether they had seen the wound or not. But the fact of the existence of the wound is otherwise established by testimony, which is above suspicion, and indeed the whole evidence of these two witnesses might be rejected without injury to the case for the prosecution. Having no doubt whatsoever therefore of the prisoner's guilt, I concur in the conviction of the sessions judge and would sentence the prisoner as he recommends.

Mr. D. J. Money.—The judge has stated the facts of the case, but they appear to me to be of a suspicious character, and the evidence, on the ground of many improbabilities, insufficient for conviction.

Four men go out one night to fish, Shureeutoollah the prosecutor, Apoochah Chowkeedar the prisoner, and Shufrah and Ashruf. They fish in a piece of water at a little distance from the prosecutor's house. The prisoner leaves them on the pretext of getting a basket to put the fish in, but, instead of going home for it, proceeds to the house of the prosecutor, and enters the apartment where his wife is sleeping. He lays his hands upon her; she recognises his voice, and calls out his name.

It is not in evidence whether he had connection with her before. If he had, she would never have cried out. If he had not, he either went for that purpose by appointment, or with the intention of inducing her to consent. Under the first supposition she would not have called out his name. Under the second, if she did call out, he would have made his escape immediately. Instead of either of these results, what happens, or rather what are we asked to believe? The husband hears the scream. It is not in evidence how far off he was at the time, and I doubt much from the map and the evidence, such as it is, whether he was within hearing.

However, he rushes to the rescue. The scream must have been one of terror and for assistance. What does he do when he reaches his house? Instead of dashing into his wife's room to defend her, and expel the intruder, whose name he had heard, he asks "what has happened?" and is told by his wife that the prisoner is there, having forced an entrance, and she begs him to secure the outer *tatty*, upon which he proceeds to fasten it and shut in the prisoner with his wife.

The prisoner, who during this conversation is inside the

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room, kicks down the *tatty* and kicks over the husband, who falls backwards.

It is natural to suppose that having done this, and the way for his escape being clear, he would have escaped immediately. But no, he remains, and when the prosecutor's godmother, an old woman, who was sleeping in the verandah, awakes at the noise and comes out and is about to raise up her son, the prisoner seizes a bamboo, which he finds in the verandah, strikes her with it on the temple and kills her. Such is the statement of the prosecutor's wife, corroborated by one other eye-witness. The prosecutor's own story differs from this statement. He says the prisoner attacked him, when he fell, and that a blow, which was levelled at him, struck his mother on the temple and killed her.

Why he should not only have remained, but when baffled in his criminal design and with his lust ungratified, why he should have attacked the poor unoffending old woman, and not the wife or the husband, is difficult to conceive. Of the two statements, that of the prosecutor is more likely to be true.

Shufrah and Asruf come up. It is not in evidence where they were when the scream was uttered, or when exactly they made their appearance, or whether they were called. "They came up soon afterwards," as the sessions judge states, and saw the body. "The prisoner persuaded them to say nothing about the matter," and so the matter was hushed up. When the witnesses, Shufrah and Asruf came up, they were three to one; and it is difficult to imagine by what persuasion or threat the offended wife and the enraged husband were pacified, the husband especially, after the chastity of his wife had been attempted and his godmother killed before his own eyes. It was not a case where a zemindar and a ryot, or a master and a servant were the antagonistic parties, and a bribe would have secured silence. The prisoner, though a chowkeedar, was in the same rank of life as the prosecutor and his wife. He must moreover have been looked upon by the village community as a "*budmash*," having been once convicted of cow-stealing and they would naturally have been glad to get rid of him.

All this occurred, if it did occur, on the 22nd May. On the 23rd May, the body is buried; and it is given out that the old woman died of cholera.

Had she met with a violent death, and had the contused wound, described upon the temple, been the cause, the neighbours, who attended the burial, must have known it, and some of them surely would have given information.

On the 26th, Haroo, a chowkeedar of a neighbouring village, meets the prosecutor with a dejected countenance, asks the cause, and is told by him that his mother had died.

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On the 27th, the prosecutor goes to the house of Haroo, whose sympathy and enquiries elicit from him at last the disclosure that his mother had been killed by the blow of a *lattee*.

Information is then for the first time given to the thannah authorities, who institute a local investigation and discover the facts as they appear on the record.

On the 29th May, seven days after the occurrence, the body was exhumed and sent in to the station, but in so decomposed a state, that the medical officer was unable to give any opinion as to the cause of death.

There is no proof, therefore, as far as medical evidence goes, which is most material in a case like this, that the deceased died from the contused wound on the temple, and consequently met with her death, as the prosecutor and his wife and the other eye-witnesses state, at the hands of the prisoner.

The contused wound described might have been caused by a fall against a hard substance. Taylor in his work on Medical Jurisprudence, page 227, states that "A medical witness is rarely in a position to swear with certainty, that a contused wound of the head must have been produced by a weapon and not by a fall."

Shufrah and Asruf, who swore before the joint-magistrate, that they saw the contused wound on the temple, denied the fact before the sessions judge. Their denial necessarily throws suspicion on the rest of their testimony.

Shureeutoollah, the prosecutor, has been made a witness to strengthen probably the evidence for the prosecution; but I cannot, under the circumstances, regard his testimony as that of an independent witness.

There are many important particulars in this case, regarding which questions might have been put to the witnesses by the sessions judge. They are left unexplained in consequence of the questions not being put; and the chain of evidence is incomplete.

Looking at all the improbabilities of the case, to which I have alluded, the silence of the injured parties and the absence of the medical evidence as to the cause of death, I think that the charge against the prisoner is not proved, and that he is legally entitled to an acquittal.

Mr. H. T. Raikes.—I see no reason to doubt the credibility of the witnesses who have given evidence in this case.

The prisoner is represented, as having made use of the opportunity of looking for the basket at Shureeutoollah's house, and of his absence therefrom to introduce himself into the wife's sleeping hut with the intention of having connection with her, that being repulsed in his wishes and the husband being attracted by his wife's outcries and wishing to secure the culprit by fastening the door *jamp*, the prisoner kicked it open and

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knocked down the husband in the effort. The husband's godmother then came to his assistance, and while lifting him from the ground, a blow of a stick aimed at the husband by the prisoner, alighted on her head and killed her on the spot. I see nothing so improbable in this account as to doubt the veracity of those who gave it; and the delay in preferring any charge is accounted for by the husband having disliked to incur the responsibility of accusing the chowkeedar, and believing himself to be watched, lest he should take any such steps against him.

There seems, however, to have been no hesitation on the part of the witnesses in giving all the information in their power when the police came to the spot; and the statement of the eye-witnesses is, to some extent, confirmed by the men who had been fishing with the husband, and who came to the house after the occurrence, and describe appearances in strict conformity with their accounts, corroborating also the present deposition of the chief witness, as coinciding with the story he then told them of his godmother's death.

The state of the body precluded any satisfactory *post mortem* examination; but still the medical evidence particularises the mark on the temple of the deceased; and the prisoner himself, before the sessions court, admitted the existence of such an injury on the corpse, pleading that the husband attributed it to a fall.

The certainty of this injury having been seen by so many, coupled with the direct and positive evidence of those who saw the blow struck and the immediate effect of it on the deceased, leave no doubt, in my mind, of the death having been caused by the prisoner's violence.

I concur then with Mr. Samuells and the sessions judge, in convicting the prisoner of culpable homicide; and under the circumstances, agree in the sentence proposed, of fourteen years' imprisonment with labor.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
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The Court being of opinion that from the evidence of the witnesses it appeared clearly that two contradictory statements made by the prisoner had been made *deliberately* and *intentionally* and were material to the issue of the case in which they were given, confirmed the sentence passed upon him by the sessions judge.

CRIME CHARGED.—Perjury, in having on the 9th March, 1856, deposed under a solemn declaration taken instead of an oath before the deputy magistrate in charge of the sub-division of Cox's Bazar, that he actually saw an affray taking place between one hundred and forty up-country coolies and forty men under the charge of Tofer Alee and Mushruf Alee, and that he saw the men assembled for that purpose with *lattees* in their hands; and in having on the 3rd June, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the additional sessions judge of the district, that he did not see the affray taking place between the one hundred and forty up-country coolies and the forty coolies under Tofer Alee and Mushruf Alee; such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 17th July, 1856.

Remarks by the additional sessions judge.—That the prisoner did, on two several occasions, first before the deputy magistrate of Cox's Bazar, and secondly before the additional sessions judge of Chittagong, make two statements, both on solemn affirmation taken instead of an oath, directly contradictory to each other on a point material to the issue of the case, regarding which he was examined by the two officials named, was abundantly proved by the evidence adduced for the prosecution.

The prisoner admitted the delivery of the two contradictory statements, but urged that the first was made under fear, and in fact extorted from him. Of the three witnesses whom he desired to have summoned for his defence, only one was produced at the trial. He did not state that any force or intimidation was used to procure the delivery of the prisoner's evidence. Nor did it appear from the prisoner's defence that the two absent witnesses could speak to the employment of such force or intimidation.

The sole plea urged for the defence being thus unsupported by evidence, while the case for the prosecution was fully esta-

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blished, the court in concurrence with the verdict of the jury convicted the prisoner of perjury.

Sentence passed by the lower court.—To be imprisoned with hard labor for the period of (3) three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) Prisoner has appealed, urging that the statement made by him before the deputy magistrate was made under fear, and that it was in fact extorted from him. This is a repetition of the plea which he ineffectually urged before the court below. The evidence of the witnesses shows clearly that the two contradictory statements made by the prisoner were made *deliberately* and *intentionally*, and in other points sustain fully the prisoner's conviction for perjury. We see no reason to interfere with the sentence passed upon him.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

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Case of FUKEER BOOEE.

Prisoner, a professional dacoit, transported.

CRIME CHARGED.—1st count, dacoity in the house of Jhattoo Geeree, of thannah Kanchunnuggur; 2nd count, dacoity in the house of Kaleedas Nag, darogah of Ghat Roosoolpore, of thannah Nemal; 3rd count, dacoity in the house of Urjoon Mundul, brother of Toolsaram Mundul, of thannah Nemal; 4th count, dacoity in the house of Boidinath Doss Sirdar, son of Punchoo Doss Sirdar, of thannah Nemal; 5th count, with being by profession a dacoit and having belonged to gangs of dacoits under Sirdar Dhunnoo Bhoony and others (convicts).

Committing Officer.—Captain C. H. Keighly, assistant general superintendent, and assistant dacoity commissioner, and joint-magistrate.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 20th September, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads *not guilty*, but sets up no defence. There is no doubt of the man's identity. The approver witnesses swear they have known him for twenty years; that his village, Basdeb Beriah, is near to their residences. They mention the name of two of his brothers and further state that the prisoner was a chaprassy in

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the salt department. He is denounced of the three witnesses as having been engaged in the dacoities laid to his charge.

The records of the cases noted in the margin,* have been laid before the court in corroboration and in support of the oral evidence adduced against the prisoner.

* *Nuthee* No. 469, dacoity in the house of Roghoonath Doss.
Nuthee No. 407, dacoity in the house of Jhuttoo Geeree.
Nuthee No. 484, dacoity in the house of Kaleedas Nag.
Nuthee No. 156, attempt at dacoity in the house of Onoopram Chund and Doondeeram Chund.
Nuthee No. 482, dacoity in the house of Urjoon Mundul, brother of Toolsaram Mundul.
Nuthee No. 548, dacoity in the house of Boidinath Doss, son of Punchoo Doss.

The first of these No. 469, shows that a dacoity was committed on the 16th May, 1852, in the house of Roghoonath Doss, of Dihee Bahiree Pykehar, when property valued at Rs. 1,049, was plundered. Several of the dacoits were declared to have been recognized by the prosecutor in his deposition taken on the 17th idem, but neither the names of the prisoners, or witnesses of this trial then transpired.

The record of the next dacoity charged No. 407, shews it to have been committed on the 18th March, 1850, corresponding with the 7th Choit, 125., Umlee, in the house of Jhuttoo Geeree of Meyndeenuggur, Pergunnah Kusba Hijlee, when property valued at Rs. 105-12, was plundered. Towards the end of the third watch of the night, the prosecutor gave verbal information of its occurrence, to Mirza Hingon, the darogah of thannah Kanchunnuggur, who was then at the village of Bortolia about ¾ of a *coss* from the scene of the robbery. The darogah immediately proceeded to the spot, but the dacoits had decamped. The prosecutor threw suspicion against one Sumbhooram Mytee, a neighbour, at whose house there was a *jattra,* to witness which, a large concourse of people had taken place.

On the 23rd March, the darogah of the adjoining thannah of Nemal, forwarded to the magistrate a report dated the 8th Choit, from Anuntoram Singh, burkundaz, mentioning that Kishto Mundul, a chowkeedar of Basdeb Beriah had reported the absence of Gungaram Booeeah, Bogwan Doss, Fukeer Booee, prisoner No. 8, Kashee Naik, Narain Pandah and several others from their houses the previous night; that they had not returned at one *pahur* of the 8th Choit; that the inmates of their houses would give no tidings of where they had gone; that some of them had been before implicated in a dacoity; and that he suspected the party had gone for no good purpose. This chowkeedar in his deposition of the 21st March, 1850, mentions "last Monday night" as the time of their absence, which is found to correspond with the 18th March, when the dacoity actually occurred.

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Information of this was sent to the darogah of Kanchunnuggur who came and arrested, with the exception of Bogwan Doss, all the abovenamed, Dhunnoo Doss, witness No. 2, and several others. Narain Pandah in his examination taken on the 25th March, 1850, stated he had heard that Gungaram Booeeah. Fukeer Booee, prisoner No. 8, Dhunnoo Doss and others had committed a dacoity in Meyndeenuggur, thannah Kanchunnuggur, and hinted, property might be found in their houses; on search being made, some property was found, the witness No. 2, Dhunnoo Doss, and prisoner No. 8, Fukeer Booee, and others were sent into the foujdary, but were discharged by the deputy magistrate; an enquiry into the character of these men was made, but no security for their future good behaviour was demanded.

The record No. 481, shows a dacoity to have been committed on the 23rd June, 1852, in the house of Kaleedas Nag, the salt darogah of Ghat Russoolpore, when property valued at Rs. 2,380-11 was plundered. Some information was received from one Prohulnath Geeree by the police which resulted in the arrest of Chundee Poriah, Choitun Poriah, Sumbooram Naik, Kishob Poriah and many others, but these men admitted their guilt. By the confessions of Chundee Poriah, both before the police and the magistrate, taken on the 27th June and 2nd July, 1852, Fukeer Booee, prisoner No. 8, Dhunnoo Booeeah, Dhunnoo Doss and Mudhoo Booeeah, the three approver witnesses of this trial, are implicated in this dacoity.

The other confessing prisoners aforesaid name the three witnesses in their confessions made on the 27th and the 28th June before the police, and on the 2nd July, implicate them amongst others, and also the prisoner No. 8, Fukeer Booee, as their accomplices in guilt before the magistrate's court. These four confessing prisoners and Musst. Keymee were put on their trial, and on the 2nd November of that year, convicted and sentenced by the sessions judge.

The next dacoity charged is shown by the record No. 156, to have occurred on the 11th February, 1853, in the house of Onoopram, Doondeeram and Kriteenarain Chundoo, but neither the names of the prisoner nor witnesses of this trial then transpired.

The record No. 482, shows a dacoity to have been committed on the 26th January, 1852, in the house of Urjoon and Toolsaram Mundul of Suffeabad. The former died shortly after, it would appear, from the injuries he received when he was in a sickly state of health. The names of the prisoners and witnesses do not appear in the record. At the trial in the sessions court, one Soondur Mytee was acquitted on the 18th May, 1852, the sessions judge suspecting his confession to have been extorted.

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The last dacoity charged is shown by the record No. 548, to have occurred on 6th July, 1853, in the house of Boidinath and Pachoo Doss of Juggurnathpore. The names of other villages Horeepore and Bankipore are given, but from the evidence of the approvers, these three villages appear to adjoin one another. In this dacoity one Boidinath Noujah was seized "ipso facto" and confessed on the 7th July, mentioning Dhunnoo Booeeah, witness No. 1, of this trial amongst others of his accomplices. He repeated his confession before the magistrate on the 12th July, in which he named Dhunnoo Booeeah, witness No. 1, Mudhoo Booeeah, witness No. 3, and Fukeer Booee, (prisoner No. 8, of this trial) a resident of Basdeb Beriah, and many others as having been engaged in this robbery.

The prisoner is charged with four of the six dacoities detailed above. He makes no defence, merely cites witnesses to character. They state him to be a good character, though one of them mentions that his house has been searched once or twice. There is, however, such ample corroboration of the evidence of the approver witnesses to be found in the records of the four dacoities charged, that their testimony may be relied on for the conviction of Fukeer Booee, whom I accordingly convicted of having belonged to a gang of dacoits, and recommend to be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) The corroborative evidence in this case is satisfactory, and the prisoner has no defence. We sentence him, as recommended by the sessions judge, to imprisonment for life in transportation beyond seas.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, Esqs.,
Officiating Judges.

GOVERNMENT
versus
ANUNDEE SHENEE (No. 1,) SHAFUL MAHITEE (No. 2.)

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Case of ANUNDEE SHENEE and another.

Prisoners, professional dacoits, transported.

CRIME CHARGED.—1st count, Nos. 1 and 2, dacoity in the house of Bindabun Shee of thannah Purtabpore; 2nd count, No. 1, dacoity in the house of Needheeram Ghurroee of thannah Purtabpore, and No. 2, dacoity in the house of Goluck Thakoor of thannah Puddoobassan; 3rd count, Nos. 1 and 2, being by profession dacoits and having belonged to gangs of dacoits under Sirdars, Moocheeram Khanrah and Soonder Kamar, (convicts).

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 11th September, 1856.

Remarks by the officiating sessions judge.—The prisoners plead "*not guilty*," one of them alleges that enmity is borne him by three of the five witnesses of the trial.

The five approver witnesses of the trial identify the prisoners, and denounce them as having been engaged in the dacoities with which they stand charged.

In corroboration and support of their testimony the records of the dacoities noted in the margin,* have been laid before the court.

The first of these, numbered 372, shews a dacoity to have been committed in the house of Bindabun and Bishumbur Shees of Athberia, on the 23rd July, 1849, when property amounting in value to about Rs. 4,706, was plundered. The next day Bishumbur Shee, nephew of Bindabun, deposed to having recognized amongst the dacoits, Rajoo Rana, Peyloo Raree, his son, Seetul Manna, Sagur Doss, Bustee Komar, Radhoo Komar, Gour Choron, Radhoo Choron and a man whom he thought to be Mudhoo Rana, son of Rajoo aforesaid. He suspected many others, and added that Rajoo's family was connected by marriage with Soonder Komar, a confirmed dacoit.

* *Nuthee* No. 372, dacoity in the house of Bindabun Shee.
Nuthee No. 371, dacoity in the house of Needheeram Ghurroee.
No. 1, investigation papers in the dacoity in the house of Goluck Thakoor.

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Rajoo Rana was arrested early in the morning of the 24th idem, as he returned home evidently after a night's excursion besmeared with mud up to his knees. He denied the charge.

Nundo Komar having been apprehended confessed on the 29th July, that on going to Soonder Komar's house, he said to h'm, We must commit the dacoity in Athberia to-day, on which he, Soonder Komar, Peyloo Komar, his son-in-law, Horoo Ghora and Seeba Ooriah, proceeded in the evening to Durza Hath; that by degrees the following with many others collected, viz. Davee Chowdree, Anundee Jana, Bipro Mahitee, Terra Mudhoo Sawunt, Sadhoo Padikar, Goluck Mahitee, Shaful Mahitee of Kakotia, prisoner No. 2, Koochul Jana of R ngoonathpore, witness No. 3, of this trial, and committed the dacoity after midnight plundering every thing.

Cheedam Jana was arrested and on 29th July, confessed, saying that Shaful Mahitee of Kakotia, prisoner No. 2, of this trial, Horoo Ghora, Terra Mudhoo Sawunt, Peyloo Komar, Anundo Komar, Kisto Doss, Sadhoo Padikar, proceeded from his master, Soonder Komar's house to Durza Hath, that by degrees some thirty men collected, and preparing torches attacked the house of a man, whose name he knew not, and plundered it.

Terra Mudhoo Sawunt was arrested on 31st July, and confessed that himself, Soonder, Peylaram, Shaful Mahitee, prisoner No. 2, of this trial, Mudhoo Dundopat went together; that Bajee Sawunt came and informed Soonder that all were ready; that Horoo Ghora then prepared the torches, and all proceeded to the prosecutor's house; that Goluck Mahitee and Peylaram having brought information of the chowkeedar's being asleep in prosecutor's house, they lighted the torches, lifted Davee Chowdree over the enclosing wall, and then plundered the house. He adds that Anundee Shenee, prisoner No. 1, of this trial, got hold of a bag of pice, which he was for appropriating, when Peylaram gave him a blow with a club and took it from him.

Soonder Komar was apprehended on the 31st July, and the following day confessed that Peyloo came to his house, saying We must commit the dacoity in Shee's house to-day. This having been determined upon, he, Terra Mudhoo Sawunt, Horoo Ghora, Shaful Mahitee of Kakotia, prisoner No. 2, of this trial, Kisto Doss, Anundo Jana, Davee Chowdree, Sadhoo Padikar. Nundo Komar, Bogee Sawunt, Anundee Shenee, prisoner No. 1, of this trial, in all thirty-four, committed this dacoity.

Shaful Mahitee, son of Rutton prisoner No. 2, of this trial, was arrested on the same day, and on the 1st August, confessed that at Soonder's bidding, he and another went to the *math;* that by degrees Mudhoo Sawunt, (it is doubtful whether this is witness No. 1,) Goluck Mahitee, Kisto Das of Gowrunghur, Mudhoo

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Dundopat and twenty others, names unknown assembled and committed this dacoity.

Goluck Mahitee, being arrested confessed on the same day, that Soonder, who is the Sirdar, sent Kisto Das, to call him, he stood on the road and saw Soonder, Mudhoo Sawunt, Prankisto Das, Haroo Ghora, Shaful Mahitee, of Kakotia prisoner No. 2, of this trial, Mudun Roy and others, thirty in all, collect and commit the dacoity.

Anundee Shenee, son of Bachee, of Kicburut, of Jogee Beyo Kolia Meawa, prisoner No. 1, of this trial, was arrested on 3rd August, and confessed that his relative Haroo Ghora told him to accompany him, and that he would get four pice for carrying a bundle; that he then took him to Soonder's house, and saw Sisteedhur Haree, Beesoo Mondol, Kenoo Mullick, Kota Haree, Mudhoo Dundopat, Nobin Dundopat, Sadhoo Padikar, and twenty-five men assemble, and commit the dacoity, and that Sisteedhur, gave him six rupees.

The man on the 6th August, confessed before the magistrate, that on Haroo Ghora's calling him, he went, and saw thirty-two men collected; that they lighted a torch, attacked and plundered the house and went off to Soonder Kamar's; that he got frightened and went with Mohun Dundopat and Sadhoo Padikar, who carried bundles, to Soonder Kamar's who angrily ordered him away, and he ran off; that six days after, Shistee Haree, gave him six rupees, Rs. 5-8 of which he gave up to the darogah. Amongst others of the dacoits he names Shaful Mahitee prisoner No. 2, of this trial and Nundo Komar; Sisteedhur Haree, was arrested and confessed on 3rd August, naming Anundee Shenee and others.

The darogah of police forwarded to the magistrate's office Rogoo Rana, Mudhoo Kamar, Nundo Kamar, Peyloo Rana, otherwise Kamar, Soonder Kamar, Terra Mudhoo Sawunt, the two prisoners before the court and others, but they were all discharged on 6th September, 1849, by the deputy magistrate Rajah Narinderkisto Roy Bahadoor.

The next record that of case No. 371, shows a dacoity to have occurred on the 15th May, 1849, in the house of Nidheeram Ghurroee, (his son's name is Narain.) Property valued at Rs. 346, was plundered.

Cheedam Ghurrooe, the brother of Nidheeram, and Rajnarain Manjee, his Sircar, recognised Moocheeram Khara and Persad Khara, of Oosutpore, witnesses Nos. 4 and 5, of this trial, Urjon Mondol, Mohun Ghora, Salloo and Chunda of Oodhoy Chuck and Muthoor Tantee of Anuntapore.

The aforesaid two witnesses and others were sent in by the police, but the deputy magistrate mentioned above discharged them, ordering inquiry at the same time to be made into the character of Moocheeram.

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The third record numbered 1, is only a recent enquiry made on 26th December, 1855, when Okhoyram Chuckerbutty son of Goluck Thacoor, deceased, stated that twenty-two years ago, or in 1241—42, a dacoity was committed in his father's house on the *dushummee* night of the *Bassuntee Pooja*, that the gang consisted of one hundred dacoits and plundered every thing, but that the fact was at the time concealed.

The deponent was a child at the time, but old residents and Bereshor, his cousin, confirmed his story, leaving no doubt of the occurrence.

The original *nuthee* is not to be found. The witnesses Nos. 4 and 5, Moocheeram and Persad Kharas denounce prisoner No. 2, as an accomplice in this dacoity.

The above particulars of the dacoities charged, clearly establish the fact of their commission, and corroborate the evidence of the approver witnesses. The record of the case in the instance of Bindabun and Bishumber Shees more especially does so, and so amply supports the testimony against the prisoners, that no doubt of their guilt remains. I therefore convict them of having belonged to a gang of dacoits, and recommend that they be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) We have no doubt of the commission of the dacoities with which the prisoners are charged, and the evidence of the approvers is strongly corroborated by the record of the case of dacoity in the house of Bindabun Shee, in which the prisoners were implicated by their confessions before the darogah, although before the deputy magistrate sufficient proof was not adduced against them to lead to their conviction of the crime. The charge of having belonged to a gang of dacoits is, in our opinion, established; and we sentence the prisoners, as recommended by the sessions judge, to transportation for life with labor in irons.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

KISHTO JANA.

Midnapore.
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Case of KISHTO JANA.

Prisoner, a dacoit by profession, transported.

CRIME CHARGED.—1st count, dacoity in the house of Chukoo Berah of thannah Nemal; 2nd count, dacoity in the house of Kaleedas Nag, darogah of Ghat Roosoolpore, thannah Nemal; 3rd count, with being by profession a dacoit, and having belonged to a gang of dacoits under Sirdars Dunnoo Bhoonya and others.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and assistant dacoity commissioner, and joint-magistrate.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 15th September, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads *not guilty*, and in his defence urges, that of the two dacoities laid to his charge, he knows nothing of the one in Kaleedas Nag's house, and the other was trumped up against him by Horee Geeree and Sanodhur Jana, who bear him ill-will.

Three approver witnesses swear to the identity of the prisoner, all declare him to be the brother-in-law of Modoo Samooee, and that Sanodhur Jana is a cousin of his. The witnesses denounce him as their accomplice in the dacoities in which he is arraigned.

Nuthee No. 246 dacoity in the house of Chukoo Berah, plaintiff.
Nuthee No. 484 dacoity in the house of Kaleo Das Nag.

The records of the cases marginally mentioned, have been laid before the court.

That of the first case No. 246, shows a dacoity was committed in the house of Chukoo Berah of Noaparah, Pergunnah Majonahmootah, on the 23rd April, 1841, but the amount of property plundered was very trifling. The following day, the prosecutor deposed that about midnight, being disturbed from his sleep by the noise, he ran out and was seized by four men, who beat him and his son Sahibram who had run to his assistance; that about twenty men entering his house, took the property aforesaid, and threatened to take his life, if he did not disclose where his money was concealed. On his not doing so, they again beat him, and left him senseless. In the mean time, his elder brother Neemoo managed to get through the thatch of his house, and raised the alarm. The dacoits hearing the villagers, then

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decamped. Deponent further declared that he recognized Kishto Jana (the prisoner), Kartick Mundol, Parbuttee Jana and Dhunnoo Bunj, of which recognition then and there he informed his brother and neighbours. He added that Sahibram had given one dacoit a broken head. The darogah apprehended the above men on the 24th idem, and on searching for the wounded man found at Jossabeesah village one Sonadhur Jana, cousin of the prisoner. The said Sonadhur Jana, though, in his examination, he denied participation in the dacoity, stated that Kanoo Jana, Roosadhur Geeree, Narain Mullick, Dhurmoo Das, witness No. 1 of this trial, Parbutty and Dhurmo Bonj assembled on the Monday at Kishto Jana's house, and consulted about the dacoity. That the following night, Kanoo again came to Kishto's, when examinant was peremptorily ordered off, and went to a wedding at Kartick Mundol's of the same village; that on his return home a little before midnight, Kishto Jana was absent; that one Sheeboo Kamila came the next morning early, and received two silver *mols* from Kishto, which he weighed; that he then heard of the dacoity in Chukoo Bearer's, and further added that his cousin Musst. Taree mentioned to him that Kanoo Jana had got a broken head.

This man, in his confession before the magistrate taken the 2nd May, 1844, admitted what he had said in the mofussil.

Kishto Jana was arrested with marks of blood in his clothes, for which he accounted by saying they had been stained with the juice of plantains which he had been gathering.

Dhurmoo Das, witness No. 1 of this trial was arrested and denied the charge. On his house being searched a *gillaf*, sworn to by the prosecutor, was found.

On the 11th May the darogah sent in his final report, forwarding with it to the magistrate, Sonadhur Jana, Kishto Jana (the prisoner) Parbutty Jana, Dhunnoo Bonj, Kanoo Jana. Narain Mullick, Roossodhur Geeree, and Dhunnoo Das (witness No. 1.) The first was committed to take his trial before the sessions, convicted and sentenced to 7 years' imprisonment, the others were discharged, but enquiry into their character was made, and security for their good behaviour for a twelvemonth was subsequently required from them.

The evidence of Ram Jana witness No. 5, and the brother of the prisoner will show that Musst. Taree alluded to in Sonadhur Jana's confession, is the sister of the prisoner and wife of Modhoo Samooee.

The record No. 484 shows a dacoity to have occurred in the house of Kalleedas Nag, salt darogah of Ghat Russoolpore, on the 23rd June, 1852.

The prosecutor deposed to having recognized several of the dacoits, amongst them, Dhunnoo Booeeah and Modhoo Booeeah witnesses No. 2, and No. 3 of this trial.

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On certain information received from Puhulnath Geeree, too men, Chundee Poriah and Kishob Poriah, brothers, were arrested. The former on the 27th June confessed before the police to having committed the dacoity, and named as his accomplices, amongst others, Dhunnoo Das witness No. 1, Dhunnoo Booeeah witness No. 2, Modhoo Booeeah witness No. 3 of this trial Choitun Poriah his uncle and Narain Geeree (the sirdar.)

This man, Chunder Pooriah, in his confession before the magistrate ҙaken the 2nd July, 1852, implicated the above and Kishob Poriah his brother.

Choitun Poriah having been arrested on the 27th idem, confessed the following day naming as his accomplices his nephew. Chunder Poriah, Dhunno Das witness No. 1, Dhunno Booeeah witness No. 2, his brother, (it is in evidence that this man had only one brother then alive, viz. Modhoo Booceah, witness No. 3 of this trial,) and Kishto Jana the prisoner. Choitun Poriah made confession also before the magistrate on the 2nd July, naming two of the witnesses and Chundee Poriah, amongst others. Sombhooram Naik was arrested and confessed on 28th June to the police, naming the witnesses of this trial, Chundee Poriah, Modhoo Samooee (who, it is in evidence, is the brother-in-law of the prisoner.)

In his confession before the magistrate taken 2nd July, he implicated all the persons mentioned above, and also Choitun and Kishob Poriah, amongst others. Kishob Poriah was arrested, and on the 28th June in his confession before the police, implicated amongst others his elder brother Chunder Poriah. Choitun Dutto his uncle, Sombhooram Naik the three witnesses of this trial, Kishto Jana the prisoner, Narain Geeree the sirdar dacoit to whose gang the prisoner is said to have belonged.

Before the magistrate, he confessed on the 2nd July, naming as his accomplices amongst all the abovementioned persons with the exception of Kishto Jana, the prisoner.

The above details taken from the records submitted, afford such strong corroboration of the evidence of the approvers, that no reason is left to doubt their testimony; I therefore convict the prisoner of having belonged to a gang of dacoits, and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) The charge of having belonged to a gang of dacoits is clearly established against the prisoner; and in accordance with the sessions judge's recommendation, we sentence him to transportation for life with labor in irons.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

JOWADOORRUZAH ALIAS KOTOO MEAH (No. 4,) SHEIKH CHAMIE (No. 5,) SHEIKH ESIE (No. 6,) SHOJON CHOWKEEDAR (No. 7,) SHEIKH BOGUN (No. 8,) SHEIKH NAZIM (No. 9,) SHEIKH NOWAB (No. 10,) SHEIKH BEERIE (No. 11,) MAHOMED MONOOR ALIAS MONIE MEAH (No. 12,) SHEIKH HOORMUTOOLLAH (No. 13,) SOLIMOOLLAH (No. 14,) SHEIKH KHODABUX ALIAS BUKSHEE MEAH (No. 15,) MAHOMED MOJOHUR ALIAS MOJOBUR-OOLLAH (No 16,) MAHOMED MOSHRUFF ALIAS MOSHRUFFOOLLAH (No. 17,) SURCOOMOOLLAH (No. 18,) SHOREEUTOOLLAH (No. 19,) SHEIKH ANEES (No 20,) OLEE MAMOMED (No. 21,) ALEE MAHOMED (No. 22,) SOLOOKOOLLA (No. 23,) SOLIMOOLLA (No. 24,) BRIJOGOBIND DOSS* ALIAS BRIJO ROY (No. 25,) AND KADIR MAHOMED (No. 26)

Sylhet.

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Case of JOWADOOR-RUZAH *alias* KOTOO MEAH and others.

Held that the case did not involve affray but rather a threatened riot, in which the discharge of fire arms for self defence was not legally justifiable.

CRIME CHARGED.—1st count, Nos. 4 to 24, wilful murder by gun-shots of Sheikh Romooj and Sheikh Gorib; 2nd count, affray, attended with the culpable homicide by gun-shots of Sheikh Romooj and Sheikh Gorait and severe wounding; 3rd count, aiding and abetting in the charges contained in the first and second counts; 4th count, No. 25, being accessary before and after the facts contained in the first and second counts; 5th count, No. 26, being an accessary after the facts contained in the first and second counts.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr M. Shawe, officiating sessions judge of Sylhet, on the 2nd September, 1856.

Remarks by the officiating sessions judge.—In this case prisoners Nos. 4 to 11, were the first party, and, prisoners Nos. 12 to 26, were the second party.

The particulars of this case are as follows: A dispute regarding the rent of certain lands existed between Jowadoor-ruzah *alias* Kotoo Meah Dewan (prisoner No. 4,) and Khodabux (prisoner No. 15.) Kotoo Meah (prisoner No. 4,) some days,

* Acquitted by the lower court.

previous to the date of occurrence left his house (in pergunnah Deenarpore,) which is situated at a distance of nearly a day's journey from the residence of Khodabux (prisoner No. 15,) and took up his quarters in the house of Sheikh Bogun (prisoner No 8,) distant about a mile from the place of occurrence, viz. pergunnah Baleesheerah.

On the night of the 26th of June, (corresponding with the 14th Assar, B. S.) Shojon Chowkeedar (prisoner No 7,) deposed before the darogah of thannah Noakolly to the effect that prisoner No. 4, on the afternoon of that very day, had sent Sheikh Chamie (No. 5,) Sheikh Esie (No. 6,) Sheikh Gorib and Sheikh Ramooze (deceaseds) to collect rent from prisoners Nos. 15 and 19 and others, defendants, who had given him *kabooleeuts;* that the dependents of the 2nd party, to the number of about sixty or eighty persons assembled, and were there joined by eight or ten persons on the side of the first party; that a struggle ensued between both parties, when Monoor Meah (prisoner No. 12,) of the second party, discharged a gun, by which Sheikh Gorib and Sheikh Ramooze were shot, and Sheikh Chamie and Sheikh Esie, prisoners Nos. 5 and 6 of the first party, were severely wounded.

Sheikh Gorib died on the night of the day following the date of the occurrence, and Sheikh Ramooze expired about noon of the same day.

The darogah sent in the bodies of the deceased persons, and also the wounded men, to be examined by the civil surgeon.

Prisoner No. 4, before the magistrate pleads that he did not go to the place of the occurrence; but that Sheikh Gorib and Sheikh Ramooze, (since dead) accompanied prisoners Nos. 5 and 6, for the purpose of collecting rent, and the former met with their death, and the latter were wounded by gun-shot discharged at them by one of the adherents of the second party.

Prisoners Nos. 5 and 6, admit that they went to collect rent, and were wounded by the second party.

Prisoner No. 7, pleads *not guilty*, and states that he went to the village where the occurrence took place to collect rent, and there heard that prisoners Nos. 12 and 13, on the side of the second party had, in a dispute regarding rent, wounded by gun certain persons belonging to the first party.

Prisoners Nos. 8, 9, 10 and 11, plead *alibis*.

Prisoner No. 12, on the side of the second party pleads *not guilty*, and states that the first party armed with guns, *lattees* and other weapons, with flags flying and drums beating, attacked the house of his father Khodabux (prisoner No. 15,) and also Shoreeutoollah's house; that they plundered their property, and destroyed their houses on which, he (prisoner No. 12,) in order to save his life, fled, and afterwards heard the sound of two guns being fired off; the prisoner also states, that a dispute

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regarding land between him and prisoner No. 4, was the cause which led the first party, to commit such oppression.

Prisoner No. 15, father of prisoner No. 12, corroborates the statements made by the latter, and states, that prisoner No. 4, on the day previous to the occurrence, had caused, his, and his co-partner's cattle to be seized, and his sons to be confined, who were subsequently released on his earnest supplications.

Prisoner No. 16, pleads that he had borrowed from Amjudoollah, a gun in order to have some shooting, and had kept it loaded in his house; that when the first party had made the attack, he, No. 16, came out of his house with the gun in his hand, and in the excitement fired it off unawares.

Prisoners Nos. 13, 17, 19, 24 and 26, plead *alibis*.

Prisoners Nos. 14, 18, 20, 21 and 22, state that they heard the sound of fire arms, from their houses, and some of them saw the occurrence when standing at a distance from the spot.

Prisoner No. 23, pleads ill-health, and No. 25, denies the charge *in toto*.

The eye-witnesses Nos. 1, 2, 3 and 4, deposed to the fact that prisoner No. 4, accompanied by several of his people, viz. the other defendants advanced as far as the bank of the tank of the house of prisoner No. 15, and the latter with his son, prisoner No. 12, and prisoner No. 13, and other defendants came out to meet them; the prisoners Nos. 12 and 13, fired two guns which they had in their hands and four persons belonging to the first party were wounded, of whom two died, one in that day, and the other on the next day.

Witnesses Nos. 5 and 6, deposed to having heard the sound of two guns being fired off, when prisoner No. 4, went with his people towards the house of Khodabux.

Witnesses Nos. 7, 8, 9, 10, 12, 13 and 14, state that they saw prisoners Nos. 12 and 13, come out of Khodabux's house, with firearms, which they discharged, and prisoners Nos. 5 and 6, and Sheikh Gorib and Ramooze, on the side of the first party were wounded, but the two latter afterwards died.

Witness No. 11, deposed to having heard the sound of guns being fired off, and to having seen prisoner No. 4, and his people leave the place, he, (witness No. 11,) recognised prisoners Nos. 5, 6, 7, 8 and 9, and saw that the first party were chasing the second party.

It is clearly proved that a dispute concerning land existed between prisoner No. 4 of the first party, and prisoner No. 15 of the 2nd party, and that previous to the day of the occurrence, prisoner No. 4, had caused the seizure of some cattle belonging to prisoner No. 15, and had placed the sons of the latter in confinement, that prisoner No. 12, issued a proclamation by beat of drum to the effect, that none of the ryots [illegible] pay rent to prisoner No. 4, and in case they did so, they [illegible]

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be punished. Moreover, it would appear, that the first party, with the view of making an attack, marched near the house of the 2nd party, who, with fire-arms and other weapons assembled, and on the prisoners (Nos. 12 and 13,) discharging two guns, four persons on the side of the first party were wounded, and of whom two subsequently died.

Although before this court, the prisoners on both sides deny the crime charged against them, yet the tenor of their replies before the magistrate, which have been attested by the subscribing witnesses thereto, tends in no way to lessen their criminality; the prisoners who pleaded *alibis* in their defence, failed in proving their statements. It is also proved, by the evidence of the witnesses, that all the prisoners were concerned in the affair, except prisoner No. 25, whom, in concurrence with the verdict of the assessors, I acquit.

It is clearly proved, that both parties premeditated an affray, and had made preparations for that purpose. An unlawful assemblage took place with the intent of attacking the house of one of the parties, and which on being attempted, dangerous weapons, such as fire-arms, were used, and two persons lost their lives, and two other persons were seriously wounded, so much so that their lives were in danger. I concur so far in the verdict of the assessors as to the convictions of the prisoners, but would substitute aggravated culpable homicide for wilful murder.

Prisoners Nos. 4, 5, 6, 7, 8, 9, 10 and 11, of the first party, I convict of attempting to create a riot, in consequence of which, two of their people were slain, and two severely and dangerously wounded by gun-shot; prisoner No. 12, of the 2nd party, of aggravated culpable homicide, and severe wounding by gun-shot; Nos. 13 and 14, of being accessaries in the commission of the above crime; Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, of aiding and abetting, and prisoner No. 26, of being an accessary after the fact in the above crimes.

Prisoner No. 12, who is a ring-leader, I would sentence to ten years' imprisonment with labor in irons; Nos. 4, 13 and 14, to imprisonment for 4 years each with labor without irons, No. 4, to pay a fine of Rs. 100 in lieu of labor; Nos. 13 and 14, to pay Rs. 50 in lieu of labor, and the remaining prisoners, viz. Nos. 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 26, to be imprisoned for two years each and to pay a fine of Rupees 25 in lieu of labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) This case was not properly one of affray. The first party did on more than make a demonstration, from which an attack on the house of prisoner, No. 15, was presumed to be intended. The first party, however, assembled in a riotous, tumultuous manner, and imposed upon the

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other party the necessity of assuming an attitude of self-defence. This was perfectly justifiable on the part of the latter; but as no overt act of hostility had been committed by the first party, from which it is quite possible that in the end they might have abstained, the discharge of a gun or guns amongst them was not warranted on the part of any of the second party as a method of protecting themselves or their property.

The officiating sessions judge has said that "and on the prisoners (Nos. 12 and 13,) discharging two guns;" but in his summing up, he has shewn that, in his opinion, prisoner No. 12, alone fired. We consider this opinion to be correct according to the evidence. With reference to the excitement, under which the prisoner was naturally laboring, in consequence of the threatening proceedings of the first party, which may to some extent be regarded in palliation of his conduct, we confirm the sentence proposed by the officiating sessions judge.

That officer had the power to pass sentences upon the other prisoners according to clause 2, Section 6, Regulation LIII. of 1803, and he should have done so, merely suspending the execution of them, until the sentence of this Court upon prisoner No. 12, was passed. He will do so now.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

TRIAL NO. 3.

PROSUNNOCHUNDER CHUCKERBUTTY.

TRIAL NO. 4.

PROSUNNOCHUNDER CHUCKERBUTTY.

Jessore.

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Case of PROSUNNOCHUNDER CHUCKERBUTTY.

Appeal of a prisoner punished for uttering a forged

CRIME CHARGED.—*Trials Nos.* 3 *and* 4.—Fraudulently uttering a forged document in having caused the document marked A. to be filed in the court of the moonsiff of Tirmohini, on the 9th day of January, 1855, corresponding with 26th Poos, 1261, B. S.

CRIME ESTABLISHED.—*Trials Nos.* 3 *and* 4, knowingly and fraudulently uttering a fabricated document.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 15th August, 1856.

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document rejected. As laid down in a former case, the moonsiff was competent of himself to commit the case to the magistrate, without waiting for a private prosecution by any party to the cause.

Remarks by the officiating sessions judge.—Trial No. 3.— Under the provisions of Section 2, Act I. 1848, the moonsiff of Tirmohini sent the accused together with the evidence and document relevant to the charge to the magistrate. The fraud came to light through the sagacity of witness No. 9, who was a vakeel employed on the part of the defendants in the suit before the moonsiff. The suit was to obtain a decree for rents on a *kobooleeut*, and set aside a summary decision before given on the subject in which the claim had been dismissed on its merits. The witness No. 9, in examining the *kobooleeut* (document A. before the court) discovered it was not the same document as had been made use of before the revenue authority, and mentioning his suspicions to the court, a reference was made to the collector of Nuddea on the subject. It then appeared that the original *kobooleeut* filed in the summary suit had been returned to the parties through their mookhtear, witness No. 8, but that as usual in such cases, a copy of the document had been taken. This paper, document B. is now before the court. It does not at all correspond with document A. the *kobooleeut* filed in the moonsiff's court. The stamp on which it was inscribed was of a different value, there is a diversity in the number and entries of the witnesses to the execution of the instrument, and the contents are not alike. It has not, moreover, the collector's signature on it. Witness No. 8, deposes that he returned to the prisoner and his master, the original *kobooleeut* filed in the collector's office and that the document A. filed in the moonsiff's court is not the same. Witnesses Nos. 6 and 7, officers of the Nuddea collectorate and who received the original *kobooleeut*, had a copy of it taken and ultimately returned it, likewise affirm the document A. is not the *kobooleeut* filed originally in the summary suit. The witnesses Nos. 4 and 5, whose names are entered in document A. as having witnessed its execution, deny all knowledge of the circumstance.

The accused is the gomashta of Umbicachurn and Dinonath Mookerjees. He pleads *not guilty*, and states, in his defence, that he received a bundle of papers in the month of Assin, 1261, from Bhugwan Mookopadya, father of his master with instructions to take them to his master's vakeels. That he did not open the bundle of papers, nor was he aware of their contents; but gave them to witnesses Nos. 2 and 3, his master's vakeels; and that he has heard from witnesses cited in his defence, that among the bundle of papers he received, was the document A. now before the court. He further pleads that he had no object and could gain no benefit by filing a document which was a palpable forgery. The witnesses cited for the defence all more or less affirm positively that the bundle of papers was given in their presence to the accused by Bhugwan, and that before the prisoner had come to receive them, they heard Bhugwan read

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aloud the contents of the document A. and then put it in the bundle of papers subsequently given to the prisoner.

It is to be remarked the prisoner conducted both the suits, that before the collector and that before the moonsiff. He can also both read and write fluently and to him was returned the document filed in the collector's office.

This trial is conducted under the provisions of Regulation VI. 1832, with the aid of a jury, who find a verdict of guilty.

I entirely concur in the justice of the verdict, for it is not denied that the prisoner gave to witnesses Nos. 2 and 3, the *kobooleeut* (document A.) a palpable forgery, directing them to file it in the suit, the purport and intent of which was, to set aside a summary decision previously given on the subject, in which the forged *kobooleeut* purported to be the principal document. It was held in Nizamut Adawlut Reports, volume 2, page 454, that the mere fact of filing a forged document by a party interested in establishing its contents, affords sufficient presumption that he uttered it, knowing it to be forged. It is moreover a general rule in English law (see Railey *versus* Freeman 3, T. Reports 51) that it is not necessary to establish a fraudulent intent "that the party committing the fraud should be benefited by it, or in collusion with him who is." I consider there is full and satisfactory evidence, that the prisoner exercised the *dolus malus*, the artifice and machination intentionally employed for the purpose of deception and circumvention, in order to advance his master's, and hence his own, interests at the expense of him, against whom it was used, and convict him on the charge. Sentence, however, is deferred as the prisoner stands committed in another case of the same nature, the trial of which is immediately to be taken up.

The prisoner is sentenced in the trial of case No. 4, to a consolidated period of punishment, viz. Imprisonment with hard labor in irons for seven years.

Trial No. 4.—The prisoner in this case is the same as in the above case.

The essential features of the case, the manner in which the fraud was detected and brought to light, and the prisoner's plea and defence with the witnesses cited to establish it, are all alike in all material points to those fully detailed in the final proceeding in that trial. The forged document in this case marked A. purported to be a *kobooleeut* given by Gopaul Dutt and Bhugwan Dutt, witnesses Nos. 4 and 5, to the prisoner's masters, Umbicachurn and Dinonath Mookerjees.

These parties deny in their depositions ever having given the document and affirm it is a forgery. The suit in the moonsiff's court was instituted to set aside a summary award and the discovery, that the *kobooleeut* filed was not the same as that presented before the revenue authority, is fully established by

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the witnesses for the prosecution, who, with the exception of witnesses, Nos. 4 and 5, above alluded to, are the same parties as those in case No. 3.

The trial is conducted under the provisions of Regulation VI. 1832 with the aid of a jury who find a verdict of guilty.

I entirely concur in the verdict, for the reasons stated in detail in the trial of case No. 3, and considering the prisoner is convicted in two cases of having knowingly and fraudulently uttered fabricated documents, I pass on him the consolidated sentence of imprisonment with hard labor in irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) The appellant's pleader urges that, under the provisions of Section 2, Act I. of 1848, it is necessary that a charge of forgery or uttering a forged document in a case pending before a civil court, should be preferred by a party to the suit: whereas, the charge in this case originated with the moonsiff himself. This point, however, has been already decided in the case of Government versus Sheikh Khedun (6th April, 1854), in the ruling of which we entirely concur. We have no doubt that it was competent to the moonsiff, under the law, to send the case before the magistrate for investigation *proprio motu.*

On the facts of the case, the prisoner's guilt, is, in our opinion, fully established, and we see no occasion to interfere with the judge's sentence. We remark that Railey *versus* Freeman, quoted by the judge, was an action on the case; and that the rule, therein laid down, ought not to have been adduced as a general rule of English criminal law.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT
versus
RAMSHEBUK SEIN.

Chittagong.

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Case of RAMSHEBUCK SEIN.

Sentence of seven years' imprisonment with hard labor passed upon the prisoner by the sessions judge confirmed, the evidence being fully sufficient to establish the crime of which he has been found guilty, viz. forgery and the fraudulently issuing and publishing as true a false and fabricated deed.

CRIME CHARGED.—1st count, forgery, in having exchanged or caused to be exchanged an *istoruffraree* pottah dated 13th Srabon 1214 M. S. which document had been filed by witness No. 1, in the court of the moonsiff of Howlah, and which had been granted by him (defendant No. 8) to witnesses Nos. 2 and 3 for 1 k. 8 g. of land for an *istomaree* pottah for 14 gundas of land granted by him (defendant No. 8) to witnesses Nos. 2 and 3 bearing the same date, with the intent to defraud witnesses No . 2 and 3 : 2nd count, having abstracted or caused to be abstracted from the office of the moonsiff of Howlah a pottah for 1 c. 8 g. of land dated 13th Srabon 1214 M. S. granted by him defendant No. 8, to witnesses Nos. 2 and 3 ; 3rd count, having uttered or caused to be uttered a forged *istomaree* pottah for 14 gundas of land dated 13th Srabon 1214 M. S. purporting to have been granted by him (defendant No. 8) to witnesses Nos. 2 and 3, before the moonsiff of Howlah in lieu of an *istomaree* pottah for 1 c. 8 g. of land granted by him to witnesses Nos. 2 and 3 dated 13th Srabon 1214 M. S. with the intention of defrauding witnesses Nos. 2 and 3 ; 4th count, having exchanged or caused to be exchanged a *kobooleeut* for 1 c. 8 g. of land, dated 13th Srabon 1214 M. S. signed by witnesses Nos. 2 and 3 for a forged one of 14 gundahs purporting to have been given to him (defendant No. 8) by witnesses Nos. 2 and 3 dated 13th Srabon, 1214 M. S. ; 5th count, having uttered or caused to be uttered before the moonsiff of Howlah a forged *kobooleeut* for 14 gundas of land dated 13th Srabon, 1214 M. S. purporting to have been given to him (defendant No. 8) by witnesses Nos. 2 and 3.

CRIME ESTABLISHED.—Forgery and fraudulently issuing and publishing as true, a false and fabricated deed.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong on the 22nd August, 1856.

Remarks by the additional sessions judge.—It was proved that a pottah for a tank of an area of 1 *kanee* and 8 *gundas* was exhibited on the part of two persons called Moorary and Ruttun Monee, by their pleader in a suit before the moonsiff of Howlah. That pottah disappeared from the record of the suit,

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and in the place thereof appears a pottah purporting to be signed by the same person as the pottah exhibited, to wit, the prisoner No. 8, Ram Shebuk Sein, but differing therefrom or containing a reservation to the maker of the power of leasing 14 *gundas* of the tank to any ryot whom he might be able to induce to settle on certain premises in the maker's possession. That this reservation was not in the pottah exhibited by the suitors before the moonsiff, was abundantly proved. Besides, the substituted pottah, there is now with the record of the suit before the moonsiff, a corresponding *kobooleeut* marked B. which the prisoner No. 8, Ram Shebuk Sein admitted in his defence that he exhibited in the moonsiff's court. That this *kobooleeut* is a false and fabricated instrument was shewn by the evidence of the only witness whose name is endorsed thereon save the prisoner No. 9, Beshambur Sein. This witness who denies the genuineness of the *kobooleeut* is represented thereon as the writer of it. The forgery of this *kobooleeut* was further evidenced by the testimony of a person who was present at the writing of the pottah and *kobooleeut* alleged by the suitors before the moonsiff, and who declared that the pottah then written had not the reservation apparent in the pottah now with the record, and corresponding with a condition in the *kobooleeut* exhibited by the prisoner No. 8, Ram Shebuk Sein.

The forgery of the *kobooleeut* and the uttering thereof by the prisoner No. 8, Ram Shebuk Sein having been satisfactorily established, and the consideration that no person, save the prisoner named, could benefit materially by such forgery, tending irresistibly to the conclusion that he forged that instrument, the prisoner No. 8, Ram Shebuk was convicted accordingly. In awarding the period of this forger's imprisonment, regard was had to his having been previously convicted on a similar charge.

Sentence passed by the lower court.—Imprisonment for seven years with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The prisoner has appealed against the sentence passed by the sessions judge, on the ground that he has been convicted on insufficient and untrustworthy evidence. The evidence fully supports the crime of which the prisoner has been found guilty. We see therefore no reason for interfering with the sentence which has been passed upon him.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

Midnapore.

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Case of BIPRO MAITEE.

Prisoner, a professional dacoit, transported for life.

GOVERNMENT
versus
BIPRO MAITEE.

CRIME CHARGED.—1st count, dacoity, on 4th May, 1835, in the house of Muddun Audhikarry inhabitant of Kakga-hia, thannah Puddoobussan; 2nd count, dacoity in the month of March or April, 1834 or 1835, in the house of Goluck Thakoor, inhabitant of Syera, thannah Puddoobussan; 3rd count, dacoity on 23rd July, 1849, in the house of Brindabun Shee, nephew of Bishumbher Shee inhabitant of Autberriah, thannah Purtaubpore; 4th count, being by profession a dacoit and having belonged to gangs of dacoits under Sirdar Moocheeram Khara, and others (convicts).

Committing Officer.—Captain C. H. Keighly, assistant general superintendant and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 17th September, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads not guilty but has nothing to urge in his defence. The witnesses of this trial, five approvers, identify him and speak of his relatives Besoo, and his son Radhoo Maitee of Bharhdurpo with whom he used to reside. It further transpires that he is the son-in-law of approver witness No. 4, Pershad Khara, whose daughter Doorgah he married two years ago. These witnesses further denounce him as having committed the dacoities laid to his charge.

In corroboration of the oral evidence, the records noted in the margin, have been laid before the court.*

In regard to the dacoity in Muddun Audhikarry's house which occurred on the 4th May, 1835, it appears that the original record was sent to the court of Sudder Dewanny with the case of Rajah Lukheenarain and others *versus* Muddunmohun Audhikarry and others for defamation of character. From the copies kept in this court, a dacoity is shewn to have been com-

* No. 1, investigation papers in the dacoity in the house of Muddun Audhikarry.

No. 1, investigation papers in the dacoity in the house of Goluck Thakoor.

Nuthee No. 372, dacoity in the house of Bindabun Shee.

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Case of Bipro Maitee.

Government
versus
Aunundee Jana, sentenced to be transported by the Nizamut Adawlut on 9th August, 1856.
Government
versus
Pershad Shankee, &c. referred on the 3rd July, 1856.

mitted and in the trial noted in the margin,* the oral evidence of Shamunt Ullah and Ramgopaul Audhikarry was taken which fully proved that a dacoity had been effected.

In the second dacoity charged against the prisoner, viz. the one in the house of Goluck Thakoor of Sura, the original record is not forthcoming. An order was, in consequence, issued by Captain Keighly to the darogah of police to hold an enquiry. He makes a return setting forth that a dacoity had occurred, taking such evidence to the fact as was procurable. The son of Goluck Thakoor, who was a child at the time said, that about twenty-two years ago, a dacoity was committed in his house on the Doshummee night of the Bassuntee poojah. His cousin Bireshor and other old residents confirmed his statement.

The witnesses of this trial Kochul Jana No. 1, Bindabun Maitee No. 2, Moocheeram Khara No. 3 and Pershad Khara No. 4, denounce the prisoner as an accomplice in this dacoity.

The third dacoity of which the prisoner is indicted is that committed on the 23rd July, 1849, in the house of Bishumber and Brindabun Shee. The prosecutor recognized several of the dacoits; twelve dacoits at least, appear from the record to have been arrested, and the confessions of nine of them noted in the margin,* are to be found with it, and amongst them is Soondur Kumar one of the Sirdars to whose gang the prisoner is said to have belonged. The prisoner is himself named in the confession of Nundo Kumar taken on 29th July, 1849, before the police. Kochul Jana witness No. 1, is also implicated by Nundo Kumar.

* Rajoo Rana, Nundo Kumar, Chedam Jana, Terra Modhoo Sawant, Soondur Kumar, Saful Maitee, Goluck Maitee, Annundo Seynee and Sisteedhur Haree.

There can be no doubt of the prisoner's identity. No enmity is alleged by him against the witnesses; indeed none can be suspected. One of them, Pershad Kharah witness No. 4, is his father-in-law, and another Moocheeram witness No. 3, is his wife's uncle. The prisoner, as well as the witness No. 1, Kochul Jana, are named as accomplices in this dacoity, so far back as July, 1849, when Nundo Komar, confessed to the commission of the dacoity. There is sufficient corroboration of the evidence of the approvers to warrant confidence in it. The witnesses for the defence, in no degree exculpate him, quite the reverse. I therefore convict the prisoner of having belonged to a gang of dacoits and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A.

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Samuells and D. I. Money.) The prisoner in this case appears to be a member of the family of two of the approver witnesses, and he alleges no enmity or other motive on their part for accusing him falsely. The evidence of the approvers is also corroborated by the record of the case of Bindabun Shee. We, therefore, concur with the sessions judge in convicting the prisoner of belonging to a gang of dacoits; and sentence him to imprisonment for life with transportation beyond seas.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

NUNDBEHARI AND GOVERNMENT

versus

NUCKCHADE PANDEY (No. 4,) RAJKOOMAR PANDEY (No. 5,) BUSSRAJ PANDEY (No. 6,) CHUMMUN PANDEY (No. 7,) GHOKHOOL PANDEY (No. 8,) SEWCHURN PANDEY (No. 9,) SOHUN PANDEY (No. 10,) AND PURIAG PANDEY (No. 11.)

Tirhoot.

1856. October 20. Case of NUCKCHADE PANDEY and others. Appeal rejected.

CRIME CHARGED.—Assault, attended with the culpable homicide of Sonah Pandey deceased, nephew of the prosecutor (Nundbehari Pandey.)

CRIME ESTABLISHED.—Assault, attended with the culpable homicide of "Sonah Pandey" deceased.

Committing Officer.—Mr. H. Richardson, magistrate of Tirhoot.

Tried before Hon'ble R. Forbes, sessions judge of Tirhoot, on the 17th June, 1856.

Remarks by the sessions judge.—The case which led to this commitment owed its origin to a dispute regarding "Jugman Birt," the deceased, the prosecutor and the prisoners being all brahmins, and it appears that about 4 P. M. of the day of the occurrence, the deceased and his uncle, the prosecutor, were sitting at their house-door after having come back from one Hurdyan Raie's "*shradd*," from which others of the villagers were also returning, when Kasee Pandey (acquitted) asked the prisoners Nos. 4 and 7, whether they had brought with them the "*shradd khyrat*" to which the latter replied that they had given the things in charge to the deceased. On this an altercation with abusive language ensued, and prisoners Nos. 4, 5 and 9, each struck the deceased a blow with a *lattee* on the head which felled him to the ground, when the other prisoners Nos. 6, 7, 8, 10 and 11, also struck him with *lattees* and rendered him senseless, after which, the prosecutor carried him home, and on his

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being sent into Mozufferpore for medical treatment, he died in hospital on the 3rd day from the effects of the injuries he had received.

The unreputed evidence of seven eye-witnesses for the prosecution, who saw the beating satisfactorily, establishes the guilt of all the prisoners and the medical officer who examined the body, and deposed to finding the skull extensively fractured on the crown of the head and left temple with other contusions, gave it, as his opinion, that "death was the result of the injuries on the head, and had, apparently, been caused by blows with a *lattee* two or three days before admission."

All the prisoners pleaded not guilty and make different defences, but as none of them were exculpated by the evidence of the witnesses whom they called while the convicting proof against them is clear and trustworthy, I have, in approval of the law officer's *futwa*, found them all guilty of the crime charged in the calendar and sentenced them to the punishment indicated below.

Sentence passed by the lower court.—Prisoners Nos. 4, 5, 6, 7, 8, 9, 10 and 11, each to be imprisoned without irons for the period of three (3) years and to pay a fine of (30) thirty Company's Rupees each, on or before the 5th July next, or in default of payment, to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) We see no reason to doubt the evidence against the prisoners in this case. It is clear and consistent and has not been rebutted. We reject the prisoners' appeal.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

BIPPRODASS PUNDIT (No. 1,) GUDDADHUR MALLICK (No. 2,) AND RAMKISHTO DUTT MOOKTEAR (No. 3.)

East-Burdwan.

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Case of BIPPRODASS PUNDIT and others.

Conviction of one prisoner by lower court of subornation of perjury reversed. Conviction of the others of perjury upheld: the sentence modified.

CRIME CHARGED.—Nos. 1 and 2, perjury in having on the 28th June, 1856, deposed on solemn affirmation, before the deputy magistrate of Jahanabad in a certain case of the plunder of paddy, in which Bycunto Sircar and others, were plaintiffs, and Mudoosoodun Sircar and Dhurmodass Sircar and others were defendants—that they did not know the Modoosoodun Sircar and Dhurmodass Sircar, then present in court, nor had seen them order the plunder of paddy belonging to the said plaintiffs, nor had deposed to that effect, in their former depositions. Although they had, in their previous depositions of the 6th and 7th February last, respectively, clearly mentioned on solemn affirmation, before the said deputy magistrate, that they saw the said Modhoosoodun Sircar and Dhurmodass Sircar order the paddy of the said plaintiffs being plundered; such depositions being therefore wilfully and deliberately false, on a point material to the issue of the case; and subornation of perjury, in prisoner No. 3, in having intentionally and deliberately caused the above prisoners to depose falsely as aforesaid.

CRIME ESTABLISHED.—Nos. 1 and 2, perjury and prisoner No. 3, subornation of perjury.

Committing Officer.—Moulovy Abdool Lateef, deputy magistrate, with full powers, of Jahanabad.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East Burdwan, on the 19th August, 1856.

Remarks by the officiating sessions judge.—Prisoners Nos. 1 and 2, gave evidence before the deputy magistrate in a case of plunder and swore that they had seen Modoosoodun Sircar and Dhurmodass Sircar instigating and ordering the attack.

Those two defendants were afterwards apprehended and the witnesses were re-summoned to identify them.

On being confronted with them, the two prisoners swore that they did not know Mudoosoodun and Dhurmodass, that they had not seen them on the spot ordering the plunder, and that they had not deposed to that effect in their former depositions. Two days afterwards the prisoners confessed that their first depositions were true, and that they had been intimidated into

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swearing falsely in their second depositions. They stated that they had been seized and confined by certain persons in the interest of the defendants in the plunder case, that they had been taken to the house of prisoner No. 3, (the mookhtear of Mudoosoodun and Dhurmodass,) by the peada (witness No. 10,) sent to serve them with a subpœna, and that prisoner No. 3, had persuaded them to swear to what was false.

The nazir of the deputy magistrate has sworn that on the morning of the 28th of June, the day on which the second depositions were taken, a person, on behalf of the plaintiff, came to him and said that prisoners Nos. 1 and 2, had gone to the house of prisoner No. 3, who was tampering with them. Witness No. 5, who resided in the house of prisoner No. 3, deposed before the deputy magistrate that he had heard prisoner No. 3, telling the other prisoners what evidence to give, but at the sessions, he stated that he had seen the other prisoners come to the house, but that he did not hear any conversation between them and prisoner No. 3. Witnesses Nos. 6 and 8 saw the other prisoners at the house of prisoner No. 3.

Prisoners Nos. 1 and 2, have urged nothing of importance in their defence, and the witnesses examined on their behalf have not assisted them.

Prisoner No. 3, denies that the other prisoners came to his house. Five witnesses have deposed that they were present at the house of prisoner No. 3, at the time the other prisoners are stated to have gone there, but they declare that they did not see them there.

Two* of the jury convict all the prisoners, and the third† convicts Nos. 1 and 2, and acquits prisoner No. 3. I concur with the majority, and convict prisoners Nos. 1 and 2, of the crime of perjury, and No. 3, of the crime of subornation of perjury.

* Ali Riza.
Brojanath Chowdry, Vakeel.

† Moulabux, Vakeel.

It is clear that prisoners Nos. 1 and 2, were well acquainted with Mudoosoodun and Dhurmodass, and that they deliberately swore to what was false.

There is no reason to discredit the evidence of the nazir and of the witnesses who say that they saw prisoners Nos. 1 and 2, at the house of prisoner No. 3. The facts that those prisoners went to his house, that they gave the false evidence they did, and that they afterwards in their confessions accused the prisoner No. 3, of having suborned them, are conclusive of the guilt of the latter.

I sentence the three prisoners to five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) There is no evidence whatever

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against the prisoner No. 3 in this case. It does not follow because the prisoners, Nos. 1 and 2, were seen to enter the house of No. 3, and afterwards perjured themselves, that they were suborned to do so by the prisoner No. 3. The probabilities on the contrary are that prisoners, Nos. 1 and 2, were, as they themselves say, persuaded by the defendants in the original case of plunder to repudiate their former depositions, and were sent by them to the house of prisoner No. 3, to prevent him from being influenced by the plaintiffs. We acquit the prisoner, No. 3 and direct his immediate release.

The prisoners, Nos. 1 and 2, fully admit their offence in the petition of appeal which they have presented; but plead in mitigation, that they were intimidated by the defendants in the original case of plunder, who, they say, are influential people. We do not find any proof of this on the record; but the case, in which the perjury was committed, appears to have been a petty one, and the offence itself was not marked by any circumstances of aggravation. We think therefore that a sentence of two years' imprisonment, with labor and irons, will be sufficient, and we modify the judge's order accordingly.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.
Officiating Judges.

East-Burdwan.

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Case of OBHOYCHURN BHUTTACHARJEE and others.

GOVERNMENT

versus

OBHOYCHURN BHUTTACHARJEE (No. 1,) ALI JAMIN SHEIKH (No. 2,) ROOPCHAND MOOCHEE (No. 3,) JADOO MULLICK (No. 4,) MUDDOOSOODUN HARI (No. 5,) SHEIKH SABKUT (No. 6,) RADHAMADHUB MOOKERJEE (No. 7,) KALLYDASS MOOKERJEE (No. 8,) AND BANIMADHUB MOOKERJEE (No. 9.)

One prisoner punished for conspiracy and perjury. Certain others considered by lower court guilty of conspiracy and subornation of perjury released.

CRIME CHARGED.—Nos. 1 to 9, conspiracy; Nos. 1 to 5 and 6, perjury; Nos. 7, 8 and 9, subornation of perjury.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 24th September, 1856.

Remarks by the officiating sessions judge.—Umbikachurn, the brother of prisoner No. 1, died on the 24th of May. At the time of his death, disputes were going on between Kalidass Hajra, the talookdar of Topegram, and the prisoners Nos. 1, 7,

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8 and 9, his ryots. A criminal case and suit for arrears of rent were pending against them. A sale-ameen had been deputed to enquire into an accusation against them of having forcibly carried off some distrained property. I have referred to the records of those cases.

Notice was sent to the darogah that the villagers had prevented a distraint-sale; and the jemadar* was deputed to prevent a breach of the peace. Some time after he had arrived at Topegram, he heard a noise in the direction of the house of prisoner No. 1, and on proceeding to the spot he saw the body of Umbikachurn wrapped in a bloody cloth, and the thatch of the roof burning. Prisoner No. 1, told him that the talookdar had come to his house with an armed force on pretence of looking for distrained property, and deceased having annoyed him, by his order he was struck on the head with a bamboo, from the effects of which he had died, and the house was set on fire; prisoners Nos. 7, 8 and 9, were there, and they remarked that the oppression of the talookdar would prevent any one living in the village.

* Witness, No. 1.

The body was examined by the civil assistant surgeon† and from his evidence it appears that it was much emaciated, that a bad form of diarrhœa was the cause of death, and that there were two parallel cuts visible on the head, which had probably been made after death, and which could not possibly have been the cause of death.

† Witness, No. 2.

The darogah enquired into the case and reported that the charge brought against the talookdar was false.

In the mean time prisoner No 1, presented a petition to the magistrate, repeating the charge against the talookdar, and complaining that the darogah was not carrying out the investigation in good faith.

The present commitment is the result of the enquiry held by the magistrate.

With regard to prisoners Nos. 7, 8 and 9, in addition to the evidence of the jemadar, witness No. 3 has deposed that he saw those prisoners in conversation with prisoner No. 1, that they ordered the wood which had been brought to burn the body to be taken away; that prisoner No. 8 said, they would accuse the talookdar; and that afterwards when the jemadar came to the spot, prisoners Nos. 7 and 9, were there. Witness No. 4, deposed that he heard prisoner No. 8, say in the presence of prisoners Nos. 1, 7 and 9, that they would accuse the talookdar; and they asked him (the witness) to give evidence in the case.

The son‡ of the deceased, a boy of about twelve or thirteen years of age, deposed that prisoners Nos. 1, 7, 8 and 9, consulted together and agreed

‡ Witness, No. 13.

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to accuse the talookdar, and that they carried him (the witness) away to the house of prisoner No. 9. The talookdar* deposed to the fact of disputes between himself and the prisoners.

* Witness, No 15.

Prisoners Nos. 1, 3, 4, 5 and 6, in their defence adhere to their former statements. Prisoner No. 2, asserts that he merely repeated in his evidence what he had heard from the other witnesses. Two witnesses† called in his defence, depose that they know nothing of the matter. Prisoners Nos. 7, 8 and 9, plead *alibis*. One witness‡ examined on behalf of prisoner No. 7, does not corroborate his statement. A sale-ameen§ deposes that prisoner No. 8, came to him at Arrera, on the 24th of May, and that he left at about 8 o'clock in the morning. Arrera is only one-half *coss* distant from Topegram, and there is nothing in the ameen's evidence inconsistent with the evidence for the prosecution. Three|| witnesses depose that prisoner No. 9, resided with his father-in-law at Nakoodee, a distance of about two or three *coss* from Topegram; they admit that he was in the habit of going occasionally to his home in Topegram, and they are unable to say where he was on the day Umbikachurn died.

† Witnesses, Nos. 27 and 28.

‡ Witness, No. 30.

§ Witness, No. 35.

|| Witnesses, Nos. 39, 40 and 41.

Concurring in the *futwa* of the law officer with regard to prisoners Nos. 1, 3, 4, 5 and 6, I have convicted them of 1st, conspiracy and 2nd perjury, and have sentenced them to seven (7) years' imprisonment with labor in irons, suspending execution in conformity with the provisions of Clause 6, Section 4, Regulation IX. of 1831, pending the result of this reference with regard to the other prisoners.

The law officer acquits the remainder of the prisoners. He considered that as prisoner No. 2, did not depose to being an eye-witness to the attack, he is *not guilty* of perjury, and that there is no proof against him on the charge of conspiracy. With regard to prisoners Nos. 7, 8 and 9, he is of opinion that the statements of witnesses Nos. 3 and 4, are improbable, and that witness No. 13, is not to be believed on account of his immature age.

It is true that prisoner No. 2, did not profess to be an eye-witness, but he did state that he saw ten or fifteen men with *lattees* running off, and that he saw deceased "lying murdered in his house and blood issuing from his head, where there were two wounds made by *lattees*, and that his skull was fractured." The prisoner must have been aware that deceased died from natural causes and there is no reason to suppose that he was really deceived.

Reflecting upon all the circumstances of the case, there can

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be no reasonable doubt that prisoners Nos. 7, 8 and 9, were the instigators of this abominable conspiracy. They were the leaders in the opposition to the talookdar. They were implicated in several cases with prisoner No. 1. They live not far from the house of prisoner No. 1. They were at that house when the jemadar went there on hearing the noise. The law officer does not comment upon the evidence of the jemadar; there is no reason to suspect its truth, and it bears strongly against those prisoners. There is nothing incredible in the evidence of witness No. 3. It is probable that when prisoners Nos. 7, 8 and 9, consulted with prisoner No. 1, the possibility of their being charged with the conspiracy did not occur to them, and consequently they saw no necessity for using caution. It is only owing to the fortunate circumstance that the civil assistant surgeon was able to ascertain the cause of death, that the falsehood of the charge against the talookdar was made apparent. There are grounds for regarding the evidence of witness No. 4 with suspicion, and unsupported, it would not be of much value. Witness No. 3, who appeared to understand the nature of an oath, gave his evidence in a clear and consistent manner. His evidence is legally admissible, and there were no valid grounds for its rejection.

I would convict prisoner No. 2, of conspiracy and perjury, and prisoners Nos. 7, 8 and 9, of conspiracy and subornation of perjury, and would recommend the same sentence I have passed on other prisoners.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) Not satisfied with the evidence against the prisoners Nos. 7, 8 and 9, viz., Radhamadhub Mookerjee, Kallydass Mookerjee and Banimadhub Mookerjee, we acquit them and direct their immediate release. The statement given on oath by the prisoner No. 2, Ali Jamin Sheikh, is quite inconsistent with the facts relating to the death of the deceased with which he must have been fully acquainted, and we, therefore, in concurrence with the opinion of the sessions judge, convict him of conspiracy and perjury, and sentence him, as recommended, to seven years' imprisonment with labor in irons.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS., *Officiating Judges.*

GOVERNMENT AND RUJJUB BEOPAREE

versus

JUNNOO BEOPAREE (No. 2) AND PHUTTICK* (No. 3.)

Backergunge. 1856. October 20. Case of JUNNOO BEOPAREE.

CRIME CHARGED.—No. 2, wilful murder of Ruhum Ullee; No. 3, being an accomplice in the above murder.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 3rd September, 1856.

Prisoners guilty of culpable homicide punished, more heavily than lower court recommended, on the grounds, on which mitigated punishment was proposed by the sessions judge.

Remarks by the sessions judge.—This reference is necessary inasmuch as I differ from the law officer in the degree of the crime of which he would convict the prisoner. I find him guilty of "culpable homicide," he of "wilful murder."

The law officer records the above *futwa* solely because the weapon used was a spear, without taking into consideration the intent of the prisoner.

The deceased, a young and healthy man, was engaged with others ploughing a field in which the prisoner No. 2 holds a 7-anna share. The prisoner accompanied by others ordered the deceased to desist from ploughing. Some words and abuse passed between the parties. The prisoner No. 2 thrust his *soolfee* or spear into the thigh of the deceased and this divided the popliteal artery, the loss of blood was the immediate cause of the death of the deceased, the crime is clearly proved against the prisoner by the evidence of the witnesses noted in the margin.*

* No. 1, Khodeer.
,, 2, Kinaboodeen.
,, 3, Ookiloodeen.
,, 4, Sheikh Sulleem.
,, 5, Joy Kisken Chung.
,, 6, Kishore Chung.
,, 7, Ramsoonder Chung.

The deceased and the prisoner were connections by marriage, the blow was a hasty one and not directed against a vital part; the unfortunate result could not have been anticipated. These land-feuds are so prevalent and the use of the *soolfee* so common in this turbulent district, that I cannot with reference to the present practice of our criminal courts find the prisoner guilty of wilful murder. I would convict him of culpable homicide and suggest, as an adequate sentence, that he be imprisoned for seven years with labor in irons in the zillah jail.

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* Acquitted by the lower court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.)

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We concur with the sessions judge in convicting the prisoners of culpable homicide, but consider the sentence he recommends inadequate to such an offence; the prevalence of land-feuds in the district of Backergunge and the common use of so dangerous a weapon as the *soolfee*, call for a severer example. They are not facts that should be cited in mitigation of punishment. We sentence the prisoners to fourteen years' imprisonment with labor in irons in the zillah jail.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

TARACHAND THACOOR (No. 8,) AND NOBEEN MAHATEE (No. 9.)

Midnapore.

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Case of TARACHAND THACOOR and another.

Prisoners, professional dacoits, transported.

CRIME CHARGED.—1st count, of prisoners Nos. 8 and 9 dacoity in the house of Keenoo Pattur of thannah Cassigunge; 2nd count of prisoners Nos. 8 and 9 dacoity in the house of Anundee Kapas of thannah Cassigunge; 3rd count of prisoners Nos. 8 and 9 dacoity in the house of Gooroon Sonar of thannah Puddoobassan; 4th count, of prisoner No. 8, dacoity in the house of Cheestydhur Pal of thannah Kulmejole and of prisoner No. 9, with having plundered the house of Muddun Mohun Durzee, son of Keenaram Durzee and others of thannah Purtabpore; 5th count, of prisoner No. 9, burglary in the house of Bholanath Jana of thannah Purtabpore, and of prisoner No. 8 docoity in the house of Odoychand Pandah of thannah Purtabpore; 6th count, of prisoners Nos. 8 and 9 with being by profession dacoits, and having belonged to gangs of dacoits under the deceased sirdar Muthoor Sein and others, (convicts.)

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and assistant dacoity commissioner and joint-magistrate.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 5th of September, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty*. The evidence adduced against them is that of six approvers who identify them, and four of whom denounce them as having in their company committed the dacoities and crimes with which they are severally charged. Prisoner No. 8, is

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sworn by the approvers to have been engaged in five different dacoities, and to have belonged to Muthoor Sein's gang. The prisoner No. 9, is sworn by them to have committed seven distinct offences, on five of which he has been arraigned; for one of the other two crimes, viz. the dacoity in Oodoychand Pundah's house, the prisoner is still undergoing his sentence. In regard to the other, it would appear the approver witness No. 1, omitted to mention his name in his confession before the assistant commissioner, Capt. Keighly.

The record of the seven cases noted in the margin* have been laid before the court in corroboration and support of the testimony of these witnesses.

The first case is numbered 1, and is the record of the dacoity which occurred in the house of Keenoo Pattur of Joydebpore, on the 4th April, 1853, the jemadar of police who was deputed to make the enquiry, reported that there were no signs of a dacoity and the prosecutor's statement is to the effect that two thieves attempted to get in the principal entrance of the house, but fled on an alarm being raised. Neither the names of the prisoners, witnesses nor other parties transpired on this occasion.

* *Nuthee* No. 1, attempt at dacoity in the house of Keenoo Pattur.

Nuthee No. 533, dacoity in the house of Annundee Kapas.

Nuthee No. 510, dacoity in the house of Gooroopershad Rai.

Nuthee No. 503, dacoity in the house of Sisteedhur Pal.

Nuthee No. 242, plundering the house of Mudun Mohun Durzee, Keenaram Durzee's son and others.

Nuthee No. 440, burglary in the house of Bholanath Jana in which Mooktaram Dagra is plaintiff.

Nuthee No. 549, dacoity in the house of Oodoychand Pandah in which Modhoo Menna is plaintiff.

The next is the record of case No. 533, a dacoity in the house of Annundee Kapas of Kachila, from which it appears that on the night of the 17th April, 1853, four or five men having effected an entrance by climbing over the wall and unfastening the door, broke open the cover of a *sundook* and also a small box. The inmates of the house do not, however, go to this extent in their statements.

The prisoners of this trial were arrested, and their answers taken, but not on any special ground of suspicion against them.

The record of the case No. 510, the dacoity next charged, shews that it took place on the 9th August, 1853, in the house of Gooroopersad Roy of Koolia, and property valued of Rs. 575-6-10, was plundered. The names of the prisoners and witnesses are not mentioned in this case.

The record of case No. 503, shews that a dacoity occurred on 4th May, 1853, in the house of Sisteedhur Paul, that his brother opposed the dacoits and seized one Gyaram Hara, who was released by his companions.

Rutton Jana and Boikunt Sawant, confessed in this case. Others implicated in it were sent into the magistrate. Four

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men, Pelaram Jana and three others implicated in this case, were tried by me, and on the 19th June last, the record was submitted to the Nizamut Adawlut with a recommendation that they be transported for life. The prisoner, Tarachand Chuckerbutty, on the strength of his being a bad character, was arrested by the darogah, who released him after taking his answer, but he was not mentioned by either of the confessing prisoners at the time. The next offence No. 242, charged is a serious case of plunder with wounding in the house of one Muddunmohun Durzee, which was disposed of by the magistrate. In it, Nobinmohun Maitee, son of Urjoon, &c., the prisoner No. 9, was implicated and his answer taken before the police. But this defence cannot, in my opinion, be construed into a dacoity.

The next offence charged is a burglary in the house of Bholanath Jana, which occurred on the 29th September, 1851. Case No. 440. Owing to information received by the police, one Radhoo Maitee, (since sentenced to transportation for life by the proceedings of the Nizamut Adawlut, dated 25th August last,) was arrested and on the 13th November following confessed, implicating Mudhoo Sekha, witness No. 2, and also Nobin Maitee, prisoner No. 9, of this trial. Both these men were arrested and in their confessions taken the 19th and 13th of that month, admitted their guilt before the darogah. The prisoner stated he had left his share of the booty with Soonder Kamar, a notorious dacoit. The deputy magistrate who tried the case did not, however, deem a conviction probable and released these men.

The case No. 549, shews a dacoity to have taken place in the house of Oodoychand Pandah of Bazoo, on the 27th September, 1853. One Peylaram Rana, the son-in-law of Soonder Kamar aforesaid, gave information that Nobin Teylee, prisoner No. 9, now undergoing sentence for this very dacoity, Mothoor Sein, Mothoor Sein's two sons, Tarachand Chuckerbutty, prisoner No. 8, Mudhoo Sekha, witness No. 2 of this trial, had committed the dacoity.

Mothoor Sein was arrested on the 1st October, 1853, and confessed, naming Bindabun Maitee, witness No. 1, Mudhoo Sekha, witness No. 2, and Moocheeram Dhoba, witness No. 3, of this trial. Six other men noted in the margin* also confessed to this crime.

Mothoor Sein was an approver but has deceased. Much stress has been laid on his confession, but seeing it cannot be received as evidence against the prisoners, I have not taken the depositions of the attesting witnesses.

* Nobin Maitee aforesaid.
Biprodas.
Narain Mana.
Gudhadhur Potar.
Premchand Koroonga.
Bindabun Dolooee.

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The corroboration of the evidence adduced in this trial, to be found in these records, though not so strong, as in many cases that have come before me, is sufficient to justify relianc on it. Putting out of consideration the cases of dacoity in the houses of Heenoo Potar and Gooroopersad Sonar, otherwise Gooroo Sonar (though the latter was undoubtedly effected) in which *nutheea*, neither the prisoners or witnesses are mentioned, as also the case of plunder, in the house of Muddunmohun Durzee, there still remain four cases to be considered which bear against the prisoners as follows.

Prisoner No. 8, Tarachand Chuckerbutty was arrested in case No. 533, the dacoity in Anundee Kapas' house and in case No. 503, or Sisteedhur Paul's dacoity being a known bad character. He was also apprehended in the dacoity in Oodoychand Pandah's house, (case No. 549,) on information given at the time by one Peylaram Rana, the son-in-law of Soonder Kamar aforesaid. The three witnesses of this trial Nos. 1, 2 and 3 were all named in his confession made in October, 1853, as accomplices in this dacoity by Mothoor Sein, the Sirdar, to whose gang the prisoners are deposed to have belonged.

This is, I think, sufficient corroboration to support the testimony of the witnesses.

Prisoner No. 9, Nobin Maitee was arrested in case No. 533, and also in No. 440, the burglary in Bholanath Jana's house, to which he at the time distinctly confessed and he is now undergoing his sentence for the dacoity committed in Oodoychand Pandah's house.

The former prisoner permitted the evidence of only two of his witnesses to be taken, refusing that of the others, one of whom was a convict the son of Mothoor Sein. The latter made no defence and cited no witnesses. There is no exculpation whatever of the prisoners made out, and in the total absence of any enmity or ill-will on the part of the witnesses for the prosecution, I find no reason to doubt the testimony they have borne against the prisoners. I convict them of having belonged to a gang of dacoits and recommend that they be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and D. I. Money.) The proceedings, on the trial of the prisoners by the sessions judge, appear to have been conducted with great care; we agree with him in considering the evidence sufficient to convict the prisoners of having belonged to a gang of dacoits, and sentence them, as recommended by him, to transportation for life with labor in irons.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GOBIN DEY TALEE, (No. 9,) ISWAR GHOSE, (No. 10,) DOORGACHURN GHOSE, (No. 11,) GOBIN SURNOKAR, (No. 12,) HARADHUN BAGDI, (No. 13,) BOOTHNATH, ALIAS BHOTA BAGDI, (No. 14,) BECHOO CHUNG, (No. 15,) SHAGUR DHAWA, (No. 16,) GOOROO ALIAS ROOPCHAND DOSS KOIBURT, (No. 17,) LOKENATH GHOSE ALIAS LOKA GOALA, (No. 18,) AND SHAMCHAND GHOSE ALIAS SHAM GHOSE, (No. 19.)

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The prisoners convicted of dacoity and of being professional dacoits, sentenced to transportation for life.

One prisoner acquitted of receipt of stolen property, as no guilty knowledge on his part was proved.

CRIME CHARGED.—1st count, Nos. 10 to 18 dacoity on the night of the 3rd March, 1856, in the house of Gorachand Dhara Koiburt of Mallimpore thannah; 2nd count, Nos. 9 to 11, and 13 to 18, dacoity on the night of the 7th April, 1856, in the house of Soofee Kurum Hossain of Shahpore Gazeedorga, thannah Banshbaryah; 3rd count, Nos. 12 and 19, having unlawfully and knowingly received or bought property plundered in the dacoity charged in count 2nd; count 4th, Nos. 9 to 18, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, zillah Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 20th of September, 1856.

Remarks by the additional sessions judge.—On the night of the 3rd March last, was committed the dacoity at Mallimpore; and on the night of the 7th of the following month that at Gazeedorga. That both dacoities had been committed by the prisoners and their accomplices was ascertained from the attempt of one of them (prisoner No. 9,) to pass Banknotes forming part of the plunder at Gazeedorga. Soofee Kurum Hossain, (witness No. 4,) lost, besides more than 1,000 Rupees worth of other property, eleven Bank-notes of various amounts, aggregating in value 1,750 Rupees, and he was fortunately able to specify the number and amount of each note when at the time reporting his loss. The dacoits, when dividing the plunder, left behind them the envelope which covered these notes, which was picked up the following day, and on examination I find that the numbers of the notes recorded in Bengali inside the envelope, (with a Persian address to Soofee Kurum Hossain,) though the list is in the Bengali character and apparently hurriedly and carelessly written, are even more correctly

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given than the committing officer gathers from the list furnished at the time from other sources by the prosecutor. One number 4399, is correctly given, the figure "2" between the "3" and "9" being clearly erased.

Of the eleven notes composing the aggregate of Rs. 1,750, four are proved by witness No. 18, to have been changed by prisoner No. 9, shortly after the robbery, at his (witness's) Bank, he (witness) had given in exchange cash partly and partly smaller Bank notes. It was one of these four notes which from the Banker, Joygopal, having paid it into the Bank of Bengal gave the first clue to the gang. Another Bank note, the half of which is all that is forthcoming here, was traced on the information of prisoner No. 11, to prisoner No. 18, who gave it to prisoner No. 19, which the latter admits. This note bears number 11,803, not 1,183, as entered erroneously in Soofee Kurum Hossain's rough list. Another note of the four spoken of above is equally misnumbered 19,062 for 10,962; but there cannot be the smallest doubt the notes traced and found are those at the time reported to have been stolen and were those stolen. The proprietor of the house attacked, knows but little of the Bengali character and figures, and the Mussalman gentleman who sent him the notes in the envelope some years ago, in payment for a house, and who is now dead, in all probability knew as little. The notes traced through the Banker Joygopal witness No. 18, who has produced his ledger and attested it, are in circulation and irrecoverable.

The prisoners Nos. 10, 11, 12, 13, 14, 15, 16, 17 and 18, are charged with the dacoity at Mallimpore, on the 3rd March, 1856. There were no remarkable incidents connected with this affair, and the persons who had been engaged in it were not known, till on the 28th July, 1856, the dacoity commissioner with great zeal and intelligence got scent of it through the arrest in the Gazeedorga case. The *affair* was known from the first, and witness No. 3, is the proprietor of the premises which were attacked and robbed and speaks to the occurrence. His testimony does not affect the prisoners in any way, but corroborates the details given by the two approvers who are both dacoits convicted on their own confessions, and now awaiting the final orders, on a reference from the sessions judge, of the Nizamut Adawlut. It will be seen these two approvers were arrested and confessed simultaneously with the arrest of the prisoners.

The approver Madhub Chung, witness No. 1, confessed to the Mallimpore dacoity on 2nd August, 1856; and it will be seen from the dacoity commissioner's remarks, that so far from colluding with his fellow-witness, Ramkoomar Chung No. 2, any combination was impossible, and the circumstances as detailed by the committing officer (of the accuracy of which I have no doubt whatever) bear me out in asserting that there could have

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been no concert between either the two approvers, or between the approvers or either of them and the two confessing prisoners Nos. 9 and 10, and this remark will apply equally to the dacoities at Mallimpore, and at Gazeedorga. The 2nd approver witness Ramkoomar confessed to the Mallimpore dacoity on the 5th August, 1856, both having previously admitted that at Gazeedorga, witness No. 1, three days before.

The evidence, on the 1st count, against prisoner No. 10, is his own free voluntary confession made before the dacoity commissioner and repeated before me, both times with an accurate detail of all the incidents. Prisoner also confesses to twelve other dacoities of which eight are known to have occurred. And both the approver witnesses have denounced on both occasions.

Prisoner No. 11, freely confessed (witnesses Nos. 16 and 17,) in the court below, though now pleading not guilty. The 1st approver witness denounced him on both occasions, as did the 2nd witness. The prisoner previously confessed to four other dacoities besides those in this indictment (witnesses Nos. 16 and 17,) of which three have been *proved** (witnesses Nos. 6, 9, and 10,) to have occurred, and the occurrence of one† was known at the time. With regard to the Fukeerdanga dacoity the evidence of the witness No. 10, is less satisfactory than that of the others, but this is of little moment. Prisoner No. 12, also made a free and full confession in the court below (witnesses Nos. 16 and 17,) not only to this Mallimpore dacoity, but to two other dacoities, at Chunderhattee and Gotoo, which are known to have occurred, and the records of which are before me. He added in this confession that "it had been his trade to deal in gold and silver got in such robberies."

* Fukeerdanga.
Toloonda.
Gungwail.
† Gotoo.

Both approvers have named him from first to last; as did also three of the prisoners, Nos. 10, 11 and 16. Lastly, this prisoner was taken up in April last, on suspicion of having knowingly received part of the property plundered in a dacoity at another place. Doleara prisoner No. 13, has, throughout, pleaded *not guilty*. The proof to connect him with the Mallimpore dacoity consists of his denunciation by both approvers from first to last; and prisoners Nos. 11 and 16, having named him as an accomplice in their confessions both in this dacoity and the dacoity at Gungwail not a charge in this calendar, but a crime, which (as I have before shewn) is proved to have been perpetrated. Prisoner No. 12, stated in his confession in the court below that he had frequently purchased stolen property from this prisoner, and the way which the prisoner was selected from a body of railway employés by the approver witness, Madhub, who did not know his name, extraordinarily confirms the twelve prisoners' implication of him. Prisoner No. 14, too has never

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confessed. The two approver witnesses have, throughout, named him, and their testimony is thus supported. Prisoners Nos. 10, 11 and 16, named him as an associate in the Mallimpo.e affair, he has been also named by both approvers, and prisoners Nos. 11 and 16, for other dacoities proved to have occurred; and in 1847, he was arrested for the dacoity at Chunderhattee on two persons swearing they had recognized him in the act. This of itself and alone was (properly) considered insufficient of his conviction at the time he was released. Prisoner No. 15, has never confessed, and in this dacoity the first approver has alone consistently denounced him. But the prisoners Nos. 10 and 11, implicated him distinctly, and he has been also compromised by both approvers and by prisoners No. 11 in six other dacoities, five of which have been already referred to.* Prisoner No. 16, confessed in the commissioner's court to this Mallimpore and four other dacoities, three of which we know of (witnesses Nos. 16 and 17,) and the two approvers have throughout denounced him. Prisoner No. 11, also named him as one of the party at Mallimpore. Prisoner No. 17, has never confessed; but both approvers have declared his complicity on both occasions. Prisoners Nos. 10 and 11, also named him in their confessions, and the approver witnesses and prisoners Nos. 11 and 16, have further denounced him in their confessions to the Chunderhattee, Gotc), and Teloondoo affairs. Prisoner No. 18, confessed to other dacoities to the commissioner but not to this. Both approvers testify against him from the first in the Mallimpore case, and prisoner No. 10, has also named him as an accomplice. Prisoner has also confessed to other well known dacoities not charged in this calendar, in which the two approver witnesses and some of his fellow-prisoners also implicate him.

* Gungwail.
Chunderhattee.
Gotoo.
Teloondoo.
Fukeerdanga.

I will now proceed to the other counts, premising that in discussing the first I have exhausted all the matter affecting the prisoners from Nos. 10 to 18, on the general charge contained in the fourth count.

Prisoner No. 9, confessed to the Gazeedorga dacoity to the dacoity commissioner and had repeated his confession before me. He, at the same time, admitted he had been concerned in two other dacoities, at Ishurypore, (called Shordanga) and Allipore. The records of both these cases have been produced and the approver witness No. 5, swears to the particulars of the former. He confessed to it, long before the prisoners in this calendar were apprehended, in December, 1853. It was through this prisoner, the gang was discovered, of whom so many have confessed, and in which so much of the stolen property has been traced and partly recovered. Prisoner No. 10 confesses again

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to me his complicity at Gazeedorga; the first approver denounced him in it on 30th July, 1856, and the second approver a few days later, but immediately on giving himself up without a formal arrest, and before he could have possibly had either time or opportunity to communicate with his fellow-witness. There is more evidence against this prisoner with regard to other dacoities not in the calendar, which I have not thought it necessary to go into. Prisoner No. 11 confessed this dacoity in the court below (witnesses Nos. 16 and 17,) but now denies his guilt. Both approvers have denounced him from first to last, and he is also compromised by some of his fellow-prisoners. (Prisoner No. 12, while confessing to the first count, in the lower court denied his guilt in this, and he is not charged with it.) Prisoner No. 13, never confessed to this or any other offence of the kind, but both approvers have both times testified against him as having participated in it, and prisoner No. 10, in his confession names him as one of the party. Prisoner No. 14, who denies the charge likewise, is implicated throughout by the approvers, and by the confessions of his fellow-prisoners Nos. 9, 10 and 11. I have already shewn his previous arrest for a dacoity in 1847, when he was recognized by two persons in the act, and with regard to *that* affair, we have now the direct evidence against him of the approver witness, Ramcoomar, and lastly, two witnesses on this calendar (Nos. 31 and 32,) testified in the court below to this prisoner having had a Bank note in his possession (doubtless a portion of the Gazeedorga plunder) which he first disposed of to witness No. 32, and then (on that person's returning it) handed it over to witness No. 31, to sell for him, but which he also returned. Before me witness No. 31, shuffles in his evidence, and is most reluctant to say anything he knows in the matter. "He received" he said "from the prisoner a *printed paper*, not like a Bank note (I shewed him), *for a few days* when prisoner took it back saying he would carry it to Gorachand Nundy Mohajun." No. 32, witness repudiates his former statement altogether. Prisoner denies before me the whole story of the *printed paper*, both he and his friendly witness professing not to know what *is* a Bank note! Prisoner No. 15, is only consistently sworn to with regard to this Gazeedorga dacoity, by the approver Madhub; but he is compromised with respect to this specific crime by both his fellow-prisoners Nos. 10 and 11. Prisoner No. 16, confessed in the court below to the Mallimpore, but not to this dacoity, and it is also true that the second approver though he denounced him as an accomplice in it before the dacoity commissioner has withdrawn his evidence against him before me. The first approver, however, has all along implicated him, as have prisoners Nos. 10 and 11, the former still adhering to his original admissions. Prisoner No. 17, has been throughout

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denounced by both approvers, and by his accomplices the prisoners Nos. 10 and 11. Prisoner No. 18, confessed to this dacoity most fully and freely in the lower court. Before me, however, he retracts his confession. Both approver witnesses have named him both times, as did prisoners Nos. 9, 10 and 11, in their confessions to this charge.

The third count (having unlawfully and knowingly received or bought property acquired by dacoity) affects only prisoners Nos. 12 and 18; prisoner No. 12 confessed in the court below, he was a professional and systematic receiver of property acquired by robbery, and prisoner No. 10 confirmed this admission, and there is other direct evidence against him on this count. There has been a gold *murdana* produced, which formed part of the property taken at Gazeedorga, which has been identified by him as the property of Soofee Kurum Hossein (witness No. 4,) and which, it has been proved and prisoner admits, was sold by him (prisoner) to witness No. 21 in presence of witness No. 20; witness No. 21 is a respectable and probably wealthy writer in some public office in Calcutta and bought the ornament for 50 Rs. odd annas from the prisoner for a female relative to whom it was traced. What the prisoner says now about this *murdana* will be seen hereafter. It will here suffice to add that one of the witnesses most reluctantly admitted (No. 30) he had often received melted gold and silver from the prisoner; and on being asked to point out the prisoner's name in his books, disclosed the practice he had of making some entries in his books *without names*. If these are not entries of doubtful goods or rather goods sold by doubtful characters, I am much mistaken.

The case of the last prisoner No. 19 is somewhat exceptional. He is charged only on this one count, and he admits the matter he is charged with, the receipt from the prisoner Lokenath or Loka Goala No. 18 of the half of a bank note for 250 Rs. which he produced. Lokenath confessed to the dacoity in the lower court as has been already shewn at Gazeedorga, and *this* is one of the stolen notes as per the prosecutor's list obtained at the time. Prisoner admits he is a mere cultivator; that Lokenath, a caste connection of his, was known to him to be a poor man; that he received the *half* note to sell for Loka what he could get for it; and that he never asked Loka where he got it from. I am thus constrained to think the prisoner must have known it was stolen property to be disposed of below its apparent value at a great risk.

As to the fourth count, all who have confessed either to me or Mr. Ward as to certain specific acts of dacoity have, at the same time, confessed to *that*, and the proof seems to me equally good against the rest who have pleaded not guilty throughout, viz. Nos. 13, 14, 15 and 17.

Prisoners No. 9 and 10 have, of course, no defence. Prisoner

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No. 11 has equally none, and has summoned no witnesses. Prisoner No. 12 (who has cited no witnesses) now declares he received the gold "*murdana*" from his brother-in-law on his death fourteen years ago; and that he made no confession to the dacoity commissioner. Prisoner No. 13 pleads simply not guilty. He has examined two witnesses to character, who say they knew nothing of him. Prisoner No. 14 denies having given any *printed paper* (bank note) to the witness Bhugwan Joogey, but makes no defence. Of the four witnesses he has summoned to speak to character, the attendance of only one could be secured and he (No. 4) says *the prisoner is a rogue*. Prisoner No. 15 (against whom the evidence for the prosecution is weaker on all the counts than against the rest, but still, I think, sufficient for his conviction as one of the gang) makes a defence which, in my opinion, from the experience I have had in this class of cases, would alone fix association on him with professional dacoits. He says the approver witness Madhub Chung has quarrelled with him for debauching his (Madhub Chung's) cousin. He has produced five witnesses, two to establish an *alibi* and three to speak to his character. The evidence of the two first does not, in both counts, cover the day of the dacoity; but the latter speak well of the prisoner's reputation in the village. Prisoner No. 16 has no witnesses, and he merely says he was induced to confess falsely to the dacoity commissioner by the approvers, which is absurd, as he only confessed to one of the two dacoities they had denounced him in, and that the one of least importance. Prisoner No. 17 now says, for the first time, he was ill at the time of the dacoities. He has summoned no witnesses to prove *anything*. Prisoner No. 18 too has no evidence to produce. He says he made no confession. But it will be remembered his confession was limited to the Gazeedorga dacoity of the two charged in the calendar, though implicated in both, and that he confessed immediately on being brought up from the zillah jail where he was in imprisonment for a misdemeanor and where he could have had no communication with the approver. The defence of the prisoner Sham Chand No. 19 has been already given.

I am of opinion that the 1st count in the calendar is proved against prisoners Nos. 10, 11, 12, 13, 14, 15, 16, 17 and 18, and the second count is proved against prisoners, Nos. 9, 10, 11, 13, 14, 15, 16, 17 and 18; and the 3rd count is proved against prisoner No. 12, and so far proved against prisoner No. 19 that he "knowingly received stolen property;" and that the 4th or general count is proved against all the prisoners but the last. I beg to recommend that prisoner Nos. 9 to 18, both inclusive, be sentenced to transportation with hard labor for life; and I propose passing on the prisoner, Sham Chand Ghose, a sentence of three years' imprisonment with labor suited to his age and habits.

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An order should further be passed against all the prisoners but No. 19 for the recovery from them jointly under Act XVI. 1850 of 1500 Rs. the value of the unrecovered portion of the Bank notes known to have been plundered at Gazeedorga.

In trying this case I have considered the two approvers' evidence available before final conviction, both because they confessed* and under the precedent of Sudder Nizamut Adawlut, 1852, II. 491; and I have admitted the denunciation of fellow-prisoners in corroboration of other evidence under precedents of Sudder Nizamut Adawlut 1855. I. 414 and II. 26.

* Archibald's Criminal, p. 227.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton. The confessions, as detailed in the letter of reference, of prisoners Nos. 9, 10, 11, 12, 16 and 18, together with the evidence of the approvers and the general proof on the record against them, leave no doubt of their guilt. We see no reason to discredit the evidence of the approvers against prisoners Nos. 13, 14, 15 and 17, also. Its truth is confirmed as regards the confessing prisoners by their own statements; and we consider its general credibility to be in consequence established, so as to be fully trustworthy as regards the complicity of the four prisoners in question. We therefore concur with the additional sessions judge in their conviction, and in the sentence proposed, including the punishment by fine under Act XVI. of 1850. As regards prisoner No. 19, we consider that there is no proof of a guilty knowledge on his part. His taking the half bank note from prisoner No. 18, was certainly a ground of suspicion; but he could not have been certain of its acquisition by dacoity, and might as readily have supposed that it had been picked up or otherwise not dishonestly come by. We therefore acquit the prisoner and direct his release.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND FUTTEH ALI

versus

SOBANNEE.

Chittagong.

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The prisoner was convicted of cattle-stealing by the Nizamut Adawlut concurring with the additional sessions judge in dissent from law-officer.

CRIME CHARGED.—1st count, stealing a milch cow and its calf and another cow, the whole three worth 28 Rs. belonging to prosecutor; 2nd count, keeping in his possession the stolen property, well knowing the same to have been so obtained.

Committing Officer.—Mr. W. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 30th July, 1856.

Remarks by the additional sessions judge.—The prosecutor states that on the 27th night of the moon in the month of Jeyte last, four head of cattle were stolen from his cow-house, and that after much vain search, having heard that his cattle were at the thannah he went there and found them. He says further that having heard that the cattle were found on the premises of the prisoner No. 3, Sobannee, at the time when the cattle stolen from Jan Ali Moonshee (plaintiff in another case to be referred to in a subsequent paragraph) were found, he charges the prisoner with stealing them. Before the magistrate the prosecutor deposed that one of the cattle returned home of itself, which accounts for the discrepancy between the number stolen and the number recovered on the premises of the prisoner.

The evidence for the prosecution distinctly establishes the finding* of three head of cattle on the premises of the prisoner and identifies† the cattle there found as the property of the prosecutor.

* No. 1, Futteh Ali.
" 2, Korbanee Chowkeedar.
" 3, Hyder Ali.

† No. 4, Moodhoo.
" 6, Wazooddeen.

The defence is, that the prisoner purchased the cattle from a dealer to plough with. The dealer's name was Akbur or some other, prisoner did not exactly recollect. Prisoner used the cattle in the plough as all his neighbours know. There are no witnesses to the purchase.

This defence is supported by the evidence of two persons‡ who declared that they had seen the prisoner ploughing with the cattle.

‡ No. 8, Mahomed Rofee.
" 9, Kurrim.

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The *futwa* of the law officer finds that the cattle are plaintiff's, were stolen, and were found in the prisoner's garden, and that the prisoner could not prove his alleged purchase of them, but that there is no proof that the prisoner stole them, or kept them, knowing they had been stolen. Nay, they were kept openly in a garden and the prisoner's having ploughed with the cattle, was evidence that he had no suspicion (or fear) about them. Therefore, neither count of the calendar being proved against the prisoner, he is entitled to be discharged.

Dissenting from the law officer, I convict the prisoner of cattle-stealing and knowingly having in his possession property, to wit three head of cattle, obtained by theft. That the cattle were kept in an open manner is a mere assumption of the law officer's. Many ryots' gardens are so surrounded by green fences and trees as to be perfectly covered from external observation. Supposing that they were kept openly, that might have been done to disarm suspicion; prisoner having been discharged from jail on expiry of a sentence of three years' imprisonment for theft only a few months before these cattle were found on his premises. There might not have been room in the prisoner's cow-house for these cattle; besides, the cow stolen from another prosecutor and his own or his mother's kine. The same view of blinding the neighbours might have induced the ploughing with stolen cattle.

Together with the record of the trial above reported, I beg to submit that of another trial of the same prisoner held the same day, the result of which was, the conviction of the prisoner by the court in concurrence with the verdict of the law officer of having in his possession property, to wit, a cow obtained by theft, knowing that such property had been so obtained.

The prisoner was also the same day tried on a third charge of theft, but acquitted, the object charged to have been stolen being a *gumla* of the value of six annas, the property of Government, which the prisoner said had floated to his door up a stream in which the *gumla* appears to have been used for washing the convicts' clothes.

The trial in which I was able to concur with the *futwa* having first closed, I deferred passing sentence upon the prisoner, with the intent, in case of his conviction on one or both of the other charges also, to pass a consolidated sentence adequate to the offence or offences established against him.

Had the law officer convicted on the third trial (the acquittal having taken place on the second) I should have sentenced the prisoner on the two convictions in trials No. 5 and No 7, to five (5) years' imprisonment with labor in irons. As the acquittal by the law officer in trial No. 7, necessitated the reference of the record to the Nizamut Adawlut, I have thought it proper to submit at the same time trial No. 5. Should the

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Court deem this course right, and consider that one sentence should pass on both convictions (in case the Court should convict in trial No. 7,) I would recommend that the consolidated term of imprisonment awarded to the prisoner be five years. Should the Court on the other hand, deem it necessary that the sentences on the two trials should be separate, I would name three years as the term suitable to the conviction on trial No. 7, and in that case, I could pass sentence myself on trial No. 5, after the return of the record from the superior Court.

The magistrate has been instructed to keep the prisoner in close custody till the orders of the Court on this reference be communicated to him.

On perusal of the above remarks the following resolution was recorded by the Nizamut Adawlut (Present: Messrs. B. J. Colvin and J. H. Patton.) No. 830, dated 20th September, 1856.

The Court observe that the reference is made regarding trial No. 7, but the English calendar received is that of trial No. 5. The additional sessions judge should, however, have passed sentence on the latter trial, and not referred it to the Court. The record of No. 5, is, therefore, returned to him for that purpose. He will submit the English calendar of trial No. 7, and at the same time, state the date on which the sentence passed by him in trial No. 5, will expire; in order that if this Court agree with him in convicting in trial No. 7, the date from which the sentence should take effect may be known.

Another mistake is apparent in the letter of reference, inasmuch as the charge set forth in both cases, is in one the copy of the other, whereas it would appear in case No. 7, that two cows and a calf were stolen, while in case No. 5, one cow only was stolen. The Court consider that Mr. Fletcher should have examined the proceedings before submission, to see that they were properly forwarded.

With reference to the above, the following letter No. 92, dated 11th October, 1856, was submitted by the additional sessions judge of Chittagong.

I have the honor to acknowledge the receipt of copy of the Court's resolution of the 20th ultimo No. 830, which should have received an earlier reply, but that I have been lately suffering from rather severe indisposition.

In regard to the purport of the 2nd paragraph of the Court's resolution, I have to state that the officers on this establishment positively declare that both the calendars ordered to be transmitted to your address with my letter of the 10th August, No. 69, were duly dispatched therewith. It seems to me much more probable that one of these calendars should have been mislaid in your office, where so many covers are being constantly received and opened, than that the calendar should have

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been lost here, after being copied for dispatch. The copy of the said calendar called for, is herewith submitted. The copy of the record of trial No. 5, has not yet reached me: but the original being here, a sentence has this day been passed thereon, imprisoning the prisoner Sobhanee for two years with hard labor from the 30th July last, the date of the trial and order of reference to the Nizamut Adawlut. The term of this sentence will expire on the 29th July, 1858.

I regret that I should have omitted to detect the error adverted to in the 3rd paragraph of the Court's resolution, and can only account for its having escaped my diligent scrutiny, by the fact that the commencement of the wording of the two charges was identical and that the eye having observed that the copy of the charge in the margin of the letter began right, was too hastily satisfied that it continued right to the end. My examination of all letters and papers, whether English or vernacular laid before me for signature, whether intended for transmission to any other authority, or for record in this Court is always most searching, and I beg to assure the Court that the omission in this instance to discover the mistake was due to accident and not to want of care. The copy of my letter No. 69, submitted to the Court was the second prepared in this office, the first having been rejected for numerous blunders. The copy in the letter-book contains the charges on the two trials duly in correspondence with the calendar in each case.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur with the sessions judge in convicting the prisoner. The cattle were found on his premises, and he has failed to adduce any proof of his plea that he purchased them, and his witnesses do not depose to his ploughing with these particular cattle. We sentence the prisoner to two years' imprisonment with labor in irons from 29th July, 1858.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND JUGGOO SAOONT
versus
DOONDEE NAIK.

Cuttack.

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Case of DOONDEE NAIK.

The sessions judge found the prisoner guilty of having in his possession a bullock with knowledge that such bullock was acquired by theft and sentenced the prisoner, who had twice previously been convicted of cattle-stealing and who is a village watchman, to 7 years, with labor in irons. The Courts on the evidence, found the prisoner guilty of cattle-stealing and confirmed the sentence passed on him by the sessions judge.

CRIME CHARGED.—1st count, theft of a bullock belonging to Juggoo Saoont, prosecutor, valued at Rs. 7; 2nd count, having in his possession the said bullock with knowledge that such bullock was acquired by theft.

CRIME ESTABLISHED.—Having in his possession a bullock with knowledge that such bullock was acquired by theft.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 19th July, 1856.

Remarks by the sessions judge.—The law officer considers the 2nd charge proved, in which I agree. The witnesses prove the custom in the tributary mehals to be, that when a chowkeedar seizes stray cattle he keeps them tied up in an open place for the purpose of being recognized, but in this case defendant shut up the cow in his own house where it was found, it must be then considered that he intended to steal it, as he has no witnesses to prove that he seized it for trespass. He has before been punished in two cases of cattle-stealing and being a village watchman, the punishment must be severe. I therefore sentence him to five years' imprisonment and two more in lieu of stripes, in all seven years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) The judge has convicted the prisoner of having, in his possession, a bullock with knowledge that such bullock was acquired by theft, and has sentenced him to five years' imprisonment and two years more in lieu of stripes, in all seven years with labor in irons.

We observe from the evidence that the prisoner himself is guilty of the theft of the bullock, which was found in his possession and not of having it in his possession, a bullock acquired by some other parties to the theft; we therefore convict the prisoner of cattle-stealing; as moreover he is a chowkeedar and has been on two previous occasions convicted of theft, we confirm the sentence passed on him by the judge.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

GOVERNMENT AND JOYRAM GIRR GOSHAIN

versus

MOHES GIRR (No. 1,) SHEWRAJ GIRR (No. 2,) JALLIM GIRR (No. 3,) KISSUNDYAL GIRR (No. 4,) RAMLALLSINGH (No. 5,) AND DALLIP SINGH (No. 6.)

Dinagepore.

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Prisoners released, the evidence against them not being sufficiently strong to bring the crime with which they are charged home to them.

CRIME CHARGED.—1st count, wilful murder of Rambux Girr and Huriah Bewa; 2nd count, complicity to the murder of Rambux Girr and Huriah Bewa; 3rd count, accessaryship to the murder of Rambux Girr and Huriah Bewa before and after the fact.

Committing Officer.—Mr. E. C. Craster, officiating joint-magistrate of Maldah.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 19th of July, 1856.

Remarks by the sessions judge.—The prosecutor "Joyram Girr" was brother Goshain of the murdered Goshain "Rambux." "Heeriah Bewa" murdered was the concubine of the said "Rambux." "Moynah Bewa" witness No. 10 lived in the same house with the said "Rambux" and Heeriah.

The prisoners and the approvers "Juggo Mohun" witness No. 14, belonged to a gang which constantly assembled at the house of prisoner No 3, Jallim Girr. The approver "Juggo Mohun" was the grand *chella*, presumptive heir of "Rambux" murdered. The prisoner No. 1 "Mohes Girr" was the *chella* of a brother Goshain of "Rambux" and lived in the same house, their apartments being separated merely by a door which could be fastened on either side. The prisoner No. 2 "Shewraj Girr" was a debtor of "Rambux" and lived next door. The house of the prisoner No. 3 "Jallim Girr" was also close to that of "Rambux," and the prisoners Nos. 4 and 5 "Kissundyal Girr" and "Ramlall Singh" also in the neighbourhood. The prisoner "Dallip Singh" was servant to a man who lived at a short distance. A few months before the murder, "Rambux" being dissatisfied with "Juggomohun" for disobedience and associating with the prisoner No. 3, Jallim Girr's set, turned him out of doors and a few days before the murder, purchased a stamp for the purpose of making over the greater part of his property to the prosecutor and portions to his concubine "Heeriah" and the other woman "Moynah."

On the morning of the 10th of December the body of Rambux was found in his house with a cloth very tightly twisted round

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the neck, the women were not forthcoming and his strong box had been opened with the key, but there was a considerable quantity of valuable property left in it.

The prisoner No. 1, Mohes Girr gave information at the thannah and said that he suspected "Heeriah" of having absconded after murdering his uncle (Goshain.) After this the witness No. 9, Bissessur Girr on seeing the body of "Rambux" said that to fasten a cloth in that way would require two strong men and could not be the work of a woman sick as Heeriah was, and that the prisoner No. 1, Mohes Girr who lived in the same house was the murderer, when the latter angrily asked, if he intended to accuse him. Some days afterwards the witness told the darogah that a Goshain from Rungpore had not been heard of since he went to eat in the house of the prisoner No. 2, Shewraj Girr, and that his palankeen was still at the house where he put up. A burkundaze sent to enquire, was refused admittance, he found the palankeen burning.

The prisoner No. 4, Kissundyal Girr and Inder Girr who lived there accused each other of the burning, when the latter stated that the Rungpore Goshain had been murdered in the prisoner No. 2, Shewraj Girr's house, the body buried in an out house and afterwards thrown away, and that he, the witness had been invited by the gang, prisoners and others to join in murdering "Rambux" and "Heeriah," where they proposed to bury Heeriah's body in some Mahomedan grave and to leave Rambux's body in his house that it might appear he had been murdered by "Heeriah."

For what happened afterwards he referred the darogah to the approver "Juggo Mohun," who was then made over to the witness Bissussur and was induced to tell all he knew of the murder, on the condition that the witness would do his best to save him, the approver, the prisoner Nos. 1, "Mohes Girr" and the prisoner No. 3 "Jallim Girr. Juggo Mohun then stated that in the presence of prisoners Nos. 2 to 6 and two west countrymen whose names he did not know and Inder Girr *alias* Alif he had been asked by prisoner No. 2 to join in murdering "Rambux" and "Heeriah;" that he was told how they intended to get into the house; was sent away to the house of prisoner No. 3; went from there to prosecutor's garden about 11 at night; saw the above mentioned men with something in a sack, who said they had done what they proposed and were going to throw what they had with them in the river; that after midnight No. 2 prisoner sent his servant for him, told him how they had got into the house; that he "Ramlall" and Kissundyal "strangled" "Heeriah" while "Dullip," "Jallim" and the other two men-servants strangled "Rambux;" how they sunk "Heeriah's" body; that they got some 400 rupees and gold ornaments including the *mala* on "Rambux's" neck; that a division would

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be made afterwards, adding that the prisoner No. 1 "Mohes Girr" knew nothing about the murder; that he himself had been turned out by "Rambux" on account of a quarrel with "Heeriah" and that the murder had been proposed some days before, because "Rambux" intended to give all his property to "Heeriah" and to leave nothing to him. He subsequently pointed out the foot-marks, bamboo and injury of the cornice where they got "Ramlall" to get into the house and open the door for the other men. Juggomohun had pointed out the part of the river in which the body of "Heeriah" was found, some three days before his confession was written. In the foujdary he repeated the substance of his confession, but did not mention the two servants of the prisoner No. 2 alluded to in his mofussil confession, and in his deposition when admitted as an approver he substituted "Shewraj" prisoner No. 2 for "Jallim" prisoner No. 3 as one of the party he had seen going towards the river and stated, apparently of his own accord, that the latter was present with the other prisoners before the murder. This substitution could not well have been accidental as it was an important point. "Jallim" prisoner No. 3, having been seen by three witnesses near the bank about the time the body is supposed to have been thrown into the river. It seems to me that "Juggomohun" though induced in the mofussil to tell a part of what he had seen and to point out the place where "Heeriah's" body was found, endeavoured all through to screen his friends "Mohes" and "Jallim" prisoners Nos. 1 and 3 as much as possible. Before me, he allowed that he had stated what was recorded in his confession and deposition before the joint-magistrate, but that he had done so at the instigation of the prosecutor who had agreed to expend Rs. 2000 to get him off. The house of the prisoner No. 2 "Shewraj Girr" was searched; Rs. 259 and pice found in three *kharooah* bags and a "*kassar thall*" (or plate) underground below the *tattee* of an out-house with a quantity of bits of wood heaped up over it. Two gold mohurs were also found in a long purse. "Juggomohun" the approver, the witness No. 10 "Moynah" and the prosecutor "Joyram" said the silver, copper, *kharooah* bags and "*thall*" belonged to "Rambux" murdered and "Inder Girr" No. 13, witness (absent) said the gold mohurs and purse belonged to the Rungpore Goshain who had been murdered, his body buried and the bones afterwards thrown away, I can only account for a "*thall*" of trifling value being taken away by supposing that its disappearance was intended to tally with the report that "Heeriah" had murdered "Rambux" and absconded. The witness No. 10, "Moynah" gave evidence to the "*thall*" having belonged to "Rambux" and the prosecutor "Joyram" to having seen the *kharooah* bags and rupees with "Rambux." One witness for the prisoner No. 2, "Shewraj"

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contradicted himself grossly, regarding the *kharooah* bags and I feel perfectly satisfied that they did belong to "Rambux." The witness "Inder Girr" No 13, was not forthcoming at the trial and "Juggomohun Girr" witness No. 14, the approver, denied the truth of his foujdary deposition, so that the case for the prosecution rests on the evidence of witnesses to the assertions of the said "Inder Girr" and the consequent confession of "Juggomohun," the approver, both supported by the latter having named and pointed out the place where the body of "Heeriah" was fot nd, and by the finding of property belonging to the murdered "Rambux Girr" in the house of the prisoner No. 2, "Shewraj Girr," the evidence of witnesses to the prisoner No. 3, "Jallim Girr" having been seen on the night of the murder close to the part of the river where the body of "Heeriah" was found, the evidence of witnesses to the prisoner No. 4, "Kissundyal Girr" having been found where the palanquin of the Rungpore Goshain (supposed to have been murdered by the same gang) was burning, immediately after the darogah, while investigating this case, had been told of the other evidence to the false information regarding the murder given at the thannah by the prisoner, No. 1, "Mohes Girr" who lived in the same house with the murdered persons, evidence to "Juggomohun" having been turned out of doors by his grand gooroo "Rambux" for disobedience and associating with the prisoner No. 3, "Jallim Girr" and the rest of the set, and evidence to all the prisoner having belonged to the same gang and frequently assembling in the house of the prisoner No. 3, "Jallim Girr," evidence to the prisoner, No. 2, Shewraj Girr" having been a debtor of "Rambux," evidence to Juggomohun" the approver, and the prisoner No. 1, "Mohes Girr," having been considered the presumptive heir of "Rambux," and to "Rambux" when sick having got a stamp for the purpose of making over a small portion of his property to "Heeriah" and "Moynah" and all the rest to the prosecutor "Joyram" his brother Goshain.

The prisoner No. 1, Mohes Girr, accuses the prosecutor of the murders assisted by "Moynah" witness No. 10, who lived in his house after the murders as his concubine, and asserts, that the only entrance to the house of the deceased was by the prosecutor's door. He also pleads that he was not named by the approver, Juggomohun, as having been present either at the consultation or at the murder, but it is clear that the confession was made on the condition that "Mohes Girr" was to be allowed to escape, and there could have been no grounds for such a proviso had he not been present. The prisoner No. 2, Shewraj Girr pleads sickness and that the money, bags and "*thall*" found in his house belonged to him, but there is no explanation as to the "*thall*" having been found underground with a lot of wood piled up over the spot. The other prisoners

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plead that they were at enmity with the prosecutor, who therefore, got the approver, Juggomohun, to name them as the murderers. Jallim Girr No. 3, states, that the prosecutor gave the absent witness Inder Girr 25 rupees and promised more, but did not pay, in which Inder Girr absconded. Kissundyal prisoner No. 4, also states that Nuffer Pully witness No. 12, was engaged by the prosecutor during the day before the murders, and that the prosecutor is the murderer. Ramlall prisoner No. 5, pleads that he was not named by the witness "Inder Girr," which is true, but that witness merely mentioned the persons who were present when he was asked to join in the murder, and referred to the approver "Juggomohun" for the detail of the murders, and in that, he is particularly mentioned as the man who got over the wall and opened the door for his accomplices. The information given by "Inder Girr" was the origin of the confession of "Juggomohun," the approver, which was corroborated by the finding of the body and the property of the deceased, and that the information was given and the confession made is clearly proved by witnesses, whose evidence I see no reason to doubt, while the assertions of the prisoners as to the probability of the prosecutor, and the witnesses "Moynah and Nuffer" being the murderers, and the causes to which they attribute their having been named by "Inder Girr" and "Juggomohun," the approver, are opposed to probability.

The *futwa* of the law officer convicts the prisoners on violent presumption of being accomplices in the murder of "Rambux" and "Heeriah Bewa," in which I concur and recommend that they be sentenced to imprisonment for life in transportation beyond seas.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) There is no doubt of the murder of the deceased, Gosain, and the woman, Heeriah.

In the absence of the evidence of the approver, Juggomohun, which was relied on, when the commitment was made, and in the absence also, of the witness, Inder Girr, who was not forthcoming in the sessions court, however, strong may be the suspicions against all the prisoners, there is nothing sufficiently established on evidence against them.

The several heads on which the sessions judge has grounded his conviction, as enumerated in detail in the body of his report, most undoubtedly lead to the strongest suspicions against all the accused; but no one of them can be considered to form an approach to legal proof, excepting it may be as respects the prisoner, No. 2, near whose house, a certain brass plate, identified as property of the deceased Gosain, was found, and in whose chest were found certain bags, containing 259 Rs. which bags, one of the witnesses, to the search, said he had seen with the deceased. The statement of the witness on this point, however,

is very vague and cursory, and neither of the two witnesses examined as to the identity of the other property make any mention whatever as to the bags; they only swear to the brass plate, which the prisoner admits not to be his property, and which was only found buried without his house, under circumstances which warrant the suspicion in his favor that it had not been so placed by him. Had the several witnesses to the property been examined more circumstantially as to the bags, there might have been some evidence elicited which would perhaps have enabled us to convict this prisoner; but certainly, the record does not contain such evidence; and we must therefore acquit him as well as all the others.

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PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS., *Officiating Judges.*

GOVERNMENT AND JOYRAM GIRR GOSHAIN *versus* JUGGOMOHUN GIRR.

Dinagepore. 1856. October 23. Case of JUGGOMOHUN GIRR.

Prisoner convicted on his own confessions, on the evidence before the Court, of being an accessary before and after the fact to the murder of Rambux Girr and Heeriah Bewa and sentenced to 14 years' imprisonment with labor and irons.

CRIME CHARGED.—1st count, wilful murder of Rambux Girr and Heeriah Bewa; 2nd count, complicity to the murder of Rambux Girr and Heeriah Bewa; 3rd count, accessaryship to the murder of Rambux Girr and Heeriah Bewa before and after the fact.

Committing Officer.—Mr. E. Drummond, officiating joint-magistrate of Malda.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 19th of July, 1856.

Remarks by the sessions judge.—This is a supplement to the case of Joyram Girr and Government *versus* Mohes Girr and others. The prisoner was admitted as an approver in that case, and having, during the trial denied the truth of his deposition before the joint-magistrate was committed under Section 5, Regulation X. of 1824. The prisoner confessed both in the mofussil and foujdary to having been present when the murderers made their arrangements for the murder and to having seen several of them at night, when they said, they had done what they proposed, and were going to throw into the river what they had with them in a sack, and to his having been shortly afterwards sent for and told by one of the murderers that the plunder, coin and gold ornaments which he produced was to be shared among them. He also pointed out the part of the river where the body of the murdered woman was found, and the marks of the track of the man who got over the wall and opened the door for his accomplices. The prisoner's confession before the joint-magistrate is clearly proved and though he states in it, that he objected to the murder, it is

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clear that he did not object very strongly, and that he made no objection to sharing in the plunder. The murder was committed to prevent "Heeriah" obtaining the property of "Rambux" whose presumtive heir the prisoner was considered, until he was turned out of doors by "Rambux."

The *futwa* of the law officer convicts the prisoner as an accessary before and after the fact in which I concur and recommend that he be sentenced to fourteen (14) years' imprisonment.

Remarks by the Nizamut Adawlut —(Present: Messrs. J. S. Torrens and C. B. Trevor.) We entirely concur in the view of the case adopted by the law officer and sessions judge, and find the prisoner No. 7, guilty of being an accessary before and after the fact to the murder of Rambux Girr, and Heeriah Bewa, and sentence him, as recommended, to fourteen years' imprisonment, with labor and irons.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT
versus
ISHWAR HAREE.

Hooghly.

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Case of ISHWAR HAREE.

The prisoner was convicted and sentenced as a dacoit by profession.

CRIME CHARGED.—1st count, dacoity on the night of the 17th October, 1852, in the house of Isuff Sheikh of Deeneeshy, thannah Selimabad, zillah Burdwan; 2nd count, dacoity on the night of the 3rd December, 1853, in the house of Dhonaye Sheikh of Koolbarooye, thannah Pandooah, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seekur Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. R. P. Harrison, officiating sessions judge of Hooghly, on the 25th September, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads *not guilty.*

He is charged with two specific acts of dacoity, and with having belonged to a gang of dacoits.

1st count. This dacoity was committed on the 17th of October, 1852, in the house of Isuff Sheikh in the village of Deeneeshy, thannah Selimabad, zillah Burdwan. The occurrence was reported on the following day and also the fact that one of the dacoits named Tincowree had been wounded and seized. Tincowree confessed on the 19th of October, 1852, and implicated the prisoner Sona Fakeer (since transported) and others. He denied all knowledge of the dacoity before the foujdary court and was released by the magistrate on the 22nd of November, 1852.

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Summeer Fakeer, approver, witness No. 1, confessed to this dacoity, on the 18th of March, 1855. In that confession he gave in detail the particulars of the dacoity stating that Sona Fakeer was the leader of the gang and that he and the prisoner with many others, whom he mentioned, were engaged in its commission. He also stated that Tincowree, one of the gang, was wounded and seized at the time by the villagers. The witness has now deposed to the same effect before me. There is no other witness to this charge but the testimony of the approver is so strongly corroborated by the record of the mofussil enquiries and particularly by the confession of Tincowree (pp. 6, 7,) of record No. 389, that I think it may be fully relied upon.

It is true that Tincowree's confession was discredited by the foujdary court, and that he was released, but a reference to the magistrate's proceeding of the 22nd November, 1852, (p. 55, of record) will shew that he was acquitted solely because the magistrate considered that from his appearance he was too old and weak to have been engaged in a dacoity. That his confession was true, there can, I think, be no doubt. No less than eight of those whom he denounced as his accomplices, have since been transported, four of whom, namely, Kadoo Fakeer, Jadoo Fakeer, Mudaree Fakeer and Hosna Fakeer, were convicted of this very dacoity, on the 15th April, 1856, (p. 711 of Vol. VI. Nizamut Reports.)

2nd count. This dacoity was committed, on the 3rd December, 1853, in the house of Dhonye Sheikh, in the village of Koolbarooye, thannah Pandooah, in this district. The occurence was reported on the following day, when the darogah proceeded to the spot. His enquiries to discover the offenders were unsuccessful. Neelmoney, the chowkeedar of the village stated that he had wounded one of the gang. The darogah found traces of blood as far as Ootumpore near Beershemool where Kangali Mussulman (a notorious dacoit) lived, and he was led from this to suspect that the dacoity had been committed by the gang of the said Kangali and Mohuroodeen, both of whom evaded apprehension at the time. They have both been convicted since of belonging to a gang of dacoits and transported. Kangali confessed to numerous dacoities and amongst them (record No. 33,) to that at Koolbarooye in which he denounced both the prisoner and the witnesses Nos. 1 and 2, as his accomplices.

The witnesses Nos. 1 and 2, confessed to this dacoity, the former, on the 31st March, 1855, and the latter on the 16th of December, 1854, and both implicated in their confessions the prisoner, and stated that the dacoity was committed by Kangali's gang. Witness No. 1, in his evidence before this court, has omitted the names of five persons whom he charged in his confession, and has added the names of two others whom he did

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not then mention. The prisoner is accused both in the confession and in the witnesses' depositions and, in the main points, his evidence is consistent. Witness No. 2, in his evidence before me, mentions the prisoner and all the persons (with one exception) named in his confession as having been concerned in this dacoity adding one other. He states that the gang assembled, on the evening previous to that on which the dacoity took place, in a garden near Gobardangah, with the intention of committing the dacoity on that night, but that they dispersed without doing any thing, in consequence of Aseeroodeen one of the gang, having raised objections, because the owner of the house was his relative. In his confession, the witness did not mention this circumstance, merely stating that they got no property because Aseerooddeen had given his relative information. Witness No. 1, states that he was not present at any assembly of the gang, on the previous evening. No. 2, at first said that he, No. 1, was not then present, afterwards, that he was. I do not think that the discrepancies above noticed are sufficient to shake the general credibility of the evidence of the witnesses. They have both accused the prisoner and have otherwise given a consistent account of the manner in which the dacoity was committed, and their statements are corroborated by the record and by the confession of Kangali Mussulman taken upwards of a year before the arrest of the prisoner. Both witnesses state that the prisoner is a professional dacoit, and was associated with the gangs of Sona Fakeer and Kangali Mussulman.

The prisoner was sentenced in 1851, to one year's imprisonment, in default of finding security for good behaviour (No. 697.) In his defence, the prisoner states that witness No. 1, bears him ill-will, because he once beat him for killing a deer belonging to his master's naib and that witness No. 2, had denounced him, because he had refused to lend him money. Before the dacoity commissioner he stated that there was no ill-feeling between him and witness No. 2. The witnesses to defence Nos. 1 and 2, state that they are aware of no ill-will existing between witness No. 1, and the prisoner. Witnesses Nos. 3, 4 and 5, cited by the prisoner, to prove his character, declare that he is a bad man.

I consider the evidence sufficient to convict the prisoner of both the specific acts of dacoity with which he is charged and also of having belonged to a gang of dacoits. I recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) For the reasons recorded by the officiating sessions judge, which are fully established by the evidence on the record, we convict the prisoner of having belonged to a gang of dacoits, and sentence him to transportation for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BHOBANNY SINGH.

Hooghly.

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Case of BHOBANNY SINGH.

The prisoner was convicted and sentenced to transportation as a dacoit.

CRIME CHARGED.—1st count, dacoity on the night of the 27th October, 1848, in the house of Bissonath Bose of Kochatee, thannah Bansberiah, zillah Hooghly; 2nd count, dacoity on the night of the 30th May, 1856 in the house of Ram Chunder Ghose of Benipoor, thannah Bansberiah, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekhur Roy, deputy magistrate under the commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 20th September, 1856.

Remarks by the additional sessions judge.—The prisoner Bhobanny Singh is charged with two specific dacoities and with having belonged to a gang of dacoits.

The dacoity at Kochatee was committed on the 27th October, 1848. The 1st approver witness confessed to this dacoity in December, 1855, five months before the prisoner's arrest, when he denounced, as associated with him in it, the prisoner, his fellow-witness Cheeroo Chung Chakloi and twenty-five others. He has to-day again denounced the two first and ten of the latter by name. He gives the same account of the particulars both times, and amongst them of the wounding of the prisoner by a spear in the cheek, hurled at him from behind by the village chowkeedar. The second approver witness Cheeroo Chung Chakloi, in his confession to this Kochatee dacoity, recorded on 5th February 1856, also some months before the prisoner's arrest, denounced the prisoner and his fellow-approver Cheeroo Chung Koigeriah, besides seventeen more. He has to-day again named thirteen with one new name only, besides the prisoner and his fellow-witness. His account before me of the incidents of the affair also agrees with that given by him originally, and with that of Cheeroo Chung Koigeriah.

Both these approvers omitted in their list of associates before me, the name of Madhub Doss, but on being asked, said he was one of the party engaged. On reference to the Sudder Nizamut Reports for 1855, vol. 2, page 627, it will be seen that this Madhub Doss who had confessed to this Kochatee dacoity as far back as 19th January, 1854, gave evidence in July, 1855, with respect to his complicity in this dacoity *against* the ap-

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prover Cheeroo Chung Koigeriah, (who himself did not turn approver till after his conviction) when he *declared he was on bad terms with Madhub*. The other approver Cheeroo was called in that trial by Madhub "Seeroo Chung." I myself sent for this Madhub Doss to give evidence in corroboration of that of the two approvers, against one of whom he had previously appeared, and he has this day verified on oath (witness No. 2½) his previous statement that there was a "*khottah*" with the party, whose name he did not know, "who was very severely disabled by a wound with a spear and whom they (the dacoits) at one time consulted about the propriety of decapitating;" both the other approvers give the same account of the circumstance; all allow there was no other "*khottah*" or up-country man with the party, but the prisoner; Madhub Doss swears the prisoner is the "*khottah*" he alluded to, and the civil surgeon deposed (witness No. 4) the prisoner had an old but very distinct scar of a spear-wound in the cheek when he came in a few months back, which he has been since his incarceration, attempting to get obliterated. The evidence on this count against the prisoner seems to me most sufficient and convincing. On reference to the Nizamut Reports for March of this year, page 586, it will be seen, the approver Cheeroo Chung Chakloi has been convicted on his confession of this amongst other dacoities, which confession, as I have before mentioned, implicated the prisoner long before the latter was arrested.

The first approver confessed to the dacoity at Benipoor on the 14th December, 1855; and the second approver on the 6th February, 1856, the prisoner having been arrested in May of the latter year. Both have denounced as associated with them in the offence, the prisoner and each other from first to last; but the 1st witness of thirteen others formerly implicated now omits seven, and the 2nd witness can only remember four of the eleven he named before, giving two fresh names. The incidents in this affair were by no means remarkable, but such as they are, both approvers have detailed them accurately on both occasions. There were some wrong arrests made at the time, but the persons so arrested were at once released. There is no corroboration on this count.

Both approvers swear the prisoner was a regular member of Nobin's, Cheroo Chung Chakloi's, and other well known gangs of docoits.

The prisoner states in his defence that he was a *durwan* (this is, I have discovered another name for a *lattial* in lower Bengal) in the service of Tarnee Churn, and that both approvers owe him a grudge; but he said nothing of this in the court below. He calls two witnesses to character only, who declare they know nothing about him, either good or bad.

I convict the prisoner on the 1st and 3rd counts in the calen-

dar and recommend that he be sentenced to transportation with hard labor for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur in the conviction and sentence proposed to be passed on this prisoner on the grounds set forth by the additional sessions judge, which we have found to be fully established by the evidence on the record.

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PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BISSONATH CHUNG (No. 5,) AND NUSSEERAM CHUNG (No. 6.)

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The evidence of the approvers having been considered fully corroborated, the prisoners were convicted and sentenced as professional dacoits.

CRIME CHARGED.—1st count, Nos. 5 and 6, dacoity on the night of 27th October, 1845, in the house of Thakoordass Kassary of Ektearpoor, thannah Benipoor, zillah Hooghly; 2nd count, dacoity on the night of the 1st March, 1848, in the house of Gopal Chunder Dutt of Moopooreah, thannah Benipoor, zillah Hooghly; 3rd count, No. 5, dacoity on the night of the 3rd September, 1852, in the house of Kangallee Sheikh of Banesswarpoor, thannah Benipore, zillah Hooghly; 4th count, Nos. 5 and 6, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekhur Roy, deputy magistrate, under the commissioner for the suppression of dacoity, at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 20th September, 1856.

Remarks by the additional sessions judge.—There are four charges in this calendar against the prisoners, three specific dacoities and generally having belonged to a gang of dacoits.

Both prisoners are charged with the dacoity at Ektearpore on the night of the 27th October, 1845, *eleven years ago.* There is against them the direct evidence of but one approver witness on this count, Chunder Dooley, No. 2. He describes the particulars of the case as in his original confession, recorded on 4th June, 1856, and has, on both occasions, denounced the prisoners, but he has also denounced his fellow-approver witness, who, by his own account, was not present in the affair; and besides fourteen other associates as before, has given me three new names and has omitted five, he gave so recently to the dacoity commissioner. There is no direct or corroborative evidence whatever in support of this witness's testimony on this count,

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and the prisoners cannot therefore be convicted upon it. The committing officer in his abstract has alluded to persons having been recognised in the act and arrested at the time, but the prisoners under trial were not amongst them.

Both prisoners are also charged with the dacoity at Mussooreah on the 1st March, 1848, and on this count, we have the direct evidence of both approver-witnesses. The prisoners were arrested on the 12th and 29th June, 1856, the approvers having made their confessions and compromised them in this offence on the 23rd January and 4th June, 1856, respectively. At the same time each approver denounced the other. In their evidence now, they have each again named all three; and while the 1st approver has given me no new names of accomplices, the 2nd approver has given but two. The former has omitted three and the latter five of those they had previously recorded; but both have described all the chief incidents of the affair as they had done previously and consistently with each other.

The above direct testimony with respect to the prisoner's participation in the Mussooreah dacoity is thus corroborated. The 1st approver was arrested at the time on suspicion, and on the 3rd day after the dacoity implicated in a confession he then made both prisoners, his fellow-approver witness and one Modhoo Chung. Modhoo Chung was immediately seized, and the very next day (5th March, 1848) he too confessed and named the prisoners as accomplices. Juggoo and Modhoo were released, one by the magistrate and the other at the sessions, having of course by that time retracted, and thannah confessions alone being considered, however verified, insufficient for conviction.

Again, the approver-witness, Juggoo Chung, in his confession recorded on 23rd January, 1856, named besides the prisoners and his fellow-witness eight more accomplices. Amongst these were Tarun* Chung, Gobind* Chung and the Modhoo† just spoken of, all of whom have been since transported for, amongst others, this very dacoity. The evidence on this count is, in my opinion, quite sufficient for the conviction of both prisoners.

* 6th September, 1856.

† 13th June, 1856.

The prisoner, Bissonath, is alone charged with the dacoity at Banesswarpoor on the 3rd September, 1852. Both approvers confessed to this dacoity before prisoner's arrest, and both have throughout denounced in it the prisoner and each other. The approver, Juggoo, names exactly the same ten accomplices he did before, and Chunder Dooley the same fourteen. Both too have given me the particulars of the affair correctly and consistently with their former statements and with each other. There is nothing in corroboration of their testimony; but so consistent and accurate have they been in their narrative of the offence on both occasions, that I am inclined, taking into consideration the

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corroborative evidence on the 2nd count, to consider the prisoners guilty on this count likewise solely on their testimony.

Both approvers agree in saying the prisoners were regular members of Cheeroo Chung Chakloi's and the approver Juggoo's gangs.

The prisoner, Bissonath, states in his defence that the approver Chunder Dooley owes him a spite for arresting his (Chunder Dooley's) brother-in-law in the Patoolie affair, but in the lower court he said, the ill-feeling had been caused by his (prisoner) having arrested the said approver himself in the Moosooreah case. I find in that case both were arrested precisely at the same time, and probably while in one another's company. He cites witnesses to character only, one of whom speaks well of him, and the other two know nothing for or against him.

The prisoner, Nusseeram, says, he has been denounced solely from his fellow-prisoner, his brother having been a Chowkeedar. He calls two witnesses to character, one of whom speaks well of him and the other is unable to say what character he bears.

I beg to recommend that both prisoners be sentenced on the last three counts in the calendar to imprisonment in transportation with hard labor for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) There is no reason to distrust the evidence of the approvers in this case. It is corroborated by the circumstances detailed by the additional sessions judge; and in the cases referred to, the truth of the statements made by witness, No. 1, was established, so that his testimony may be relied upon. We convict the prisoners of having belonged to a gang of dacoits, and sentence them to imprisonment for life with labor in irons in transportation.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

DEENOO DOOLEY.

Hooghly.

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The prisoner was convicted of being a professional dacoit and sentenced to transportation.

CRIME CHARGED.—1st count, dacoity on the night of the 6th September, 1844, in the house of Woomachurn Ghose of Kamargachee, thannah Benipore, zillah Hooghly; 2nd count, dacoity on the night of the 27th October, 1848, in the house of Bissonath Bose of Kochatee, thannah Bansberiah, zillah Hooghly; 3rd count, dacoity on the night of the 4th June, 1853, in the house of Judoo Kulloo of Sathbangallee, thannah Benipore, zillah Hooghly; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekhur Roy, deputy magistrate under the commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. R. P. Harrison, officiating sessions judge of Hooghly, on the 24th September, 1856.

Remarks by the officiating sessions judge.—The prisoner is charged with three specific acts of dacoity and with having belonged to a gang of dacoits.

He pleads *not guilty*.

On the 1st count he is charged with dacoity in the house of Woomachurn Ghose, resident of Kamargachee, thannah Benipore, zillah Hooghly, on the 6th of September, 1844. The dacoity was reported by the darogah on the following day. Eight persons were sent in to the magistrate, all of whom were committed to the sessions on the 29th of October, 1844 (page 184, record No. 322) and of whom six were convicted by that court (vide report of foujdary Muhafez, dated 5th of May, 1856 appended to the record.) The witnesses Nos. 1 and 2, both approvers, have deposed to the particulars of this dacoity, implicating each other and the prisoner with many others, as having been concerned in it. They named the prisoner also in their confessions before the dacoity commissioner, recorded No. 1, on the 13th December, 1855, and, No. 2, on the 1st of February, 1856. Both witnesses mentioned amongst the persons concerned in the dacoity Jadoo Dooley, Dookrey Dooley and Roopchand Chung, all of whom were apprehended and convicted at the time. Their statements are further corroborated by an enquiry instituted by the darogah on the 3rd of February, 1856, under orders from the dacoity commissioner's office, which shews that on the night of the dacoity, the house of one Hulladhur, a Dhobee, living near to Woomachurn Ghose was plundered of

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some clothes. Both the witnesses No. 1 and 2 stated in their confessions that as the dacoits were running away, some clothes were carried off from a Dhobee's house.

The second dacoity charged against the prisoner was committed, on the 27th October, 1848, in the house of Bissonath Bose, of Kuchatee, thannah Banshberya, in this district. The occurrence was reported on the following day, and an enquiry held by the darogah, but no clue to the offenders was then obtained. Witnesses Nos. 1 and 2, confessed to this dacoity, on the 9th December, 1855, and 5th February, 1856, respectively, and implicated the prisoner. In their confessions as well as in their evidence before this court, they have given particulars of the manner in which the dacoity was committed and of circumstances attending it, which are strongly corroborated by the record of the enquiries at the time. The servant of Bissonath Bose, Sumboodass Kyburt, deposed before the darogah (page 11 of record 255,) that the son-in-law of his master Pyaree Loll Sen was throwing bricks at the dacoits from the roof, when three or four of the gang got up by means of a bamboo, and on their going to beat him, (Pyaree Loll Sen) he through fright fell from the roof to the ground. Now, both the witnesses state that a son-in-law of the owner of the house threw bricks at the dacoits from the roof, and that three of the gang got up and flung him down. Pyaree Loll Sen, it appears, was hurt by the fall and was taken in to Hooghly for medical advice. His statement was not taken by the darogah. Again, both witnesses state that one of the gang named Bhowanee Singh was wounded by a spear by the chowkeedar of the village, as they (the dacoits) were running away. On the day after the dacoity, Sonatun the chowkeedar of Kuchatee, stated before the darogah (page 2 of record 255,) that he pursued the dacoits for some distance or threw his spear at them, and that it was carried away. Bhowanee Singh, who is stated by the witnesses to have received the wound is now, the dacoity commissioner states, in his custody and still bears the mark thereof. He has been convicted by the additional sessions judge of having belonged to a gang of dacoits and recommended to be transported for life.

The third dacoity with which the prisoner is charged, was committed on the 4th June, 1853, in the house of Jadoo Kulloo of Sathbangal, thannah Benepore, zillah Hooghly. The dacoits were pursued by the villagers and one of the gang was said to have been wounded with a *lattee* by Muthoor Chung (darogah's report, dated 5th June, 1853, page 5 of record 92.) The prisoner was arrested on suspicion, on the 8th June. He had then a wound upon his right leg, the scar of which still remains, and marks of beating on other parts of his body (page 33 of record No. 92.) He accounted for the wound and the

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marks by stating that he had been beaten by the gomashta of his zemindar. Muthoor Chung, on seeing the prisoner, declared he was the man he had struck, and deposed to that effect before the magistrate, but the prisoner and also Bhugoban Dooley (since transported,) and Tarachand Dooley were acquitted by the foujdary court, the evidence against them not being considered sufficient. Witness No. 3, an approver, deposes that the prisoner was engaged in the dacoity together with himself and others, whom he has named. The witness implicated the prisoner in his confession taken on the 14th of June, 1856, in which, as well as in his deposition, he has given particulars of the manner in which the dacoity was committed. Muthoor Chung, witness No. 4, identifies the prisoner as the person he struck on the night of the dacoity. I do not think that this recognition can be relied upon, but the evidence of this witness and the record of the case satisfactorily prove that one of the gang was beaten as the dacoits were running off, and that the prisoner was seized four days afterwards having a wound upon his leg, and other marks of violence upon his person, circumstances strongly corroborative of the approver's testimony. The prisoner declined to question either of the witnesses for the prosecution. He makes no defence before this court beyond an assertion that he knows nothing whatever of either of the dacoities with which he is charged.

Before the dacoity commissioner he stated that the wound upon his leg had been inflicted by witness No. 2, who was then a Nugdee of Issur Chatterjea whom he named as a witness (No. 1,) and who has declared that he knows nothing about it. Four witnesses cited by the prisoner to prove his good character, Nos. 2, 3, 4 and 5, declare he is a bad man.

I consider the three specific acts of dacoity, with which the prisoner is charged, proved by the evidence. I also consider it proved, that the prisoner is, as he is declared to be by the three approvers, a dacoit by profession.

I would convict him of having belonged to a gang of dacoits and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) For the reasons stated by the officiating sessions judge, we convict the prisoner of having belonged to a gang of dacoits, and sentence him to transportation for life.

PRESENT:
H. T. RAIKES, ESQ., *Judge.*,
J. S. TORRENS AND C. B. TREVOR, ESQS.,
Officiating Judges.

TRIAL No. 12, OF CALENDAR No. 3, OF MAY, 1856.
GOVERNMENT AND NUBO DOSS
versus
BALUCKDOSS BYRAGHEE (No. 1,) GOVIND MANJEE (No. 2,) SHOOKOOR MUSSULMAN (No. 3,) LALLCHAND MANJEE (No. 4,) MUDHOO MUNDUL (No. 5,) NUBOKISTO MANJEE (No. 6,) KANTHDOSS BYRAGHEE (No. 7,) RAMDHONE KOURAH (No. 8,) BYEDNATH CHRISTIAN (No. 9,) AND SHOBARAM HALDAR (No. 10.)

TRIAL No. 1, OF CALENDAR No. 4, OF MAY, 1856.
GOVERNMENT AND SREEMUTTY DHURMEE
versus
BALUCKDOSS BYRAGHEE (No. 1,) GOVIND MANJEE (No. 2,) AND LALLCHAND MANJEE (No. 3.)

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Held by the majority, that in cases of belonging to a gang of dacoits in which approvers have had access to each other, and in which opportunity for collusion has thereby been afforded, the evidence of the approvers against associating in crime must be confirmed by cor-

CRIME CHARGED.—*Trial No.* 12.—1st count, Nos. 1 to 10, dacoity in the house of the prosecutor, Nubo Doss, on 4th August, 1852, at Moregunga, and plundering therefrom property to the value of 350 Rs.; 2nd count, Nos. 2, 6 and 7, privity to the above dacoity; 3rd count, Nos. 1 and 2, receiving property obtained by the above dacoity, knowing it had been so obtained; 4th count, Nos. 1 to 10, having belonged to a gang of dacoits.

Trial No. 1.—1st count, Nos. 1, 2 and 3, dacoity in the house of prosecutrix, at Goramara, in Poos, 1261, and plunder of property to the value of 12 Rs. or thereabouts; 2nd count, No. 2, privity to the said dacoity.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of the 24-Pergunnahs, on the 1st July, 1856.

Remarks by the additional sessions judge.—All the ten prisoners were charged in the first calendar; and prisoners, Baluckdoss, Govind Manjee and Lallchand Manjee in the second.

The first trial was for the dacoity at Moregunga, in the house of Nubo Doss, on the 4th August, 1852. This village is in the Soonderbunds, in the neighbourhood of Mud Point, and is surrounded by water. No report was made of the offence at the

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time, for there is no chowkeedar attached to the village, and the villagers were much averse to a visit from the police, and to running the chance of being called away from their homes to prosecute and give evidence, but that the dacoities were really committed is amply proved, first by the very credible evidence of Mr. H. Fraser, the grantee's agent;* secondly, by the admissions and depositions of the owners of the houses which were attacked immediately they were questioned about them; and thirdly, by those of certain independent witnesses besides.

* Witness No. 28, in 1st calendar.
" " 17, in 2nd ditto.

Witnesses Nos. 11, 24 and 25, in 1st calendar, and Nos. 13, 14 and 15, in 2nd ditto.

The facts were first made known to the authorities by a convict of the name of Hurree Peenooa,† who, with several others, (the witnesses, Nursing and Lallchand, being amongst them) was sentenced on the 6th August last, by the additional sessions judge to various terms of imprisonment for dacoities elsewhere. He proferred, through the keeper of the Alipore jail, information regarding these two unreported offences, and denounced as his accomplices in them all the ten prisoners at the bar, but not his fellow prisoners, the witnesses, Nursing and Lallchand, which shows clearly to my mind that what he did was not in collusion with them. *They* were named in their confessions by several of the accomplices denounced by Hurree, and on being taxed with the crimes, admitted them and were made approver witnesses. Of the former, however, was the witness, Mirtonjye, who was admitted as king's evidence, and whose evidence in corroboration, both of the incident of the cases and of the identity of the prisoners as having been engaged in them, is most reliable, as he has never been in jail, and has never had any possible means of communicating with the others, since their apprehension on the charge on which they were tried and convicted a year back.

† Witness No. 1.

Reports Sudder Nizamut Adawlut, 1856, vol. I. page 158.

roboratory testimony not only as to the *occurrence* of the preliminary crimes, but also as to the *connection of the prisoners* on their trial with the particular dacoity laid to their charge.

In the present case as there had been opportunity for collusion between the approvers and as their evidence is unsupported by independent testimony, connecting the prisoners with the dacoities laid to their charge, the prisoners are declared to be entitled to their release.

In the 1st dacoity, that at Moregunga, the house attacked was supposed to be that of Ramchand Doss, but that person was not alive at the time, and had been succeeded by his brother, Nubo Doss, the prosecutor in the first calendar. The dacoits, it appears, ill-used Nubo Doss and two others in his house, and carried off property consisting of money and goods to the value of 350 Rs. The dacoits burst the outer *tattee* door, and then broke into a building to the north by splitting the door with a hatchet. The gang consists of about twenty-five persons.

The dacoity at Goramara, in Poos, 1261, was not premeditated. The gang had intended that night to commit a dacoity

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in the house of one Pureekeet Patuck, but were prevented, and then, on the spur of the moment, proceeded to the house of Sreemutty Dhurmee, the prosecutrix, in the second calendar, a poor woman living alone and known as "Jooteeah-ki-mah," the said Jooteeah being a son of hers who lives apart from her elsewhere. There was only a mat door to the house; the poor owner of it was tied up and stripped of the ornaments on her person, and all she had besides; and the whole amount of the plunder did not exceed 7 or 8 Rs.

The 1st prisoner, Baluckdoss Byraghee, was a leader in both dacoities, as is amply proved; though he has pleaded from first to last *not guilty* to both. All four eye-witnesses denounced him in the first before the magistrate, and have done so again before me, and all three witnesses the same in the second trial. Also on searching his house in his presence, there were found three large brass jars or *gurrahs*, which Nubo Doss, the prosecutor in the Moregunga dacoity at once claimed as his, and which it has been proved* were his, and were stolen in the dacoity in 1852, while Nobin Ghose, (witness No. 29, in the Moregunga case) deposed to the magistrate, the prisoner was a professional dacoit with whom he had been associated in three other dacoities in the Midnapore district. Lastly, the prisoner admits that twenty-two years ago he underwent five years' imprisonment for dacoity, and three-half years ago, six months for theft, while intermediately fourteen years ago, he was sentenced to a year's imprisonment as a notorious bad character.

* Witnesses Nos. 11, 19, 20 and 24.

The second prisoner, Govind Manjee, confessed in the mofussil to the Moregunga dacoity, and repeated his confession (rather qualified it is true) before the magistrate. He also made a qualified confession again to the Goramara dacoity on both occasions. In the first trial all four approver witnesses denounced him to the magistrate, and three of the four (Nos. 1, 2 and 4,) before me, while in the second all the three approver witnesses denounced him in both courts. I am not at all certain the paper found in his house belongs to the prosecutor Nubo Doss; but a brass plate belonging to the widow prosecutrix in the second trial has been fairly traced to him. He was the spy and joint leader with Baluck Doss, in both dacoities, and his demeanor before me has been that of a complete ruffian.

Witnesses Nos. 5, 6, 7, 14 and 15.

Witnesses Nos 4, 5, 6, 7 and 8.

Witnesses Nos. 5 and 6.

Witnesses Nos. 10 and 11, and prisoner's confession.

Against the prisoner Shookur Mussulman No. 3, in the first calendar, we have the consistent testimony of all four approvers

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in both courts as to the Moregunga dacoity. He has not been charged with the other. There is no other evidence against him with regard to these dacoities, but the approver Nubin claimed him too as an old associate.

The No. 4, prisoner Lallchand Manjee, who is charged with both dacoities, confessed to that at Moregunga, in the mofussil,* but repudiated his confession before the magistrate. The Goramara dacoity, he admitted also in the mofussil, but denied before the magistrate. All the four approver witnesses have denounced him in the first trial in both counts, but in the second trial only the first approver on both occasions. The second approver in this calendar named him to the magistrate, but omitted to do so before me and the third approver *vice versâ*. This prisoner admits he is an old offender, and that several years back he was sentenced to ten years' imprisonment for dacoity.

* Witnesses Nos. 5, 6 and 7.

The five and remaining prisoners are only charged with the dacoity at Moregunga in the first calendar. All the four approvers bore testimony in the magistrate's court against Nos. 5, 6, 9 and 10, and all the approver witnesses except Mirtonjye Mundul, against Nos. 7 and 8. In this court Nos. 5, 6, 9 and 10, are again denounced by all four, but only the witness Lallchand implicates No. 7. The third witness before me omits No. 8, whom he denounced to the magistrate; but again No. 4, witness who did not name him to the magistrate, named him to me.

There is, however, the following very satisfactory corroborative proof of three of these prisoners' complicity in this affair. No. 5, confessed in the mofussil;* No. 6, both in the mofussil and to the magistrate;† and No. 7, the same.‡ The fishing-net found in the possession of prisoner No. 10,§ prosecutor is not sure belongs to him, and the prisoner has all along declared it to be his own. Prisoner No. 9, was claimed by the approver Nobin as a fellow dacoit in the magistrate's court.

* Witnesses Nos. 8, 9 and 10.

† Witnesses Nos. 5, 6, 7, 14 and 15.

‡ Witnesses Nos. 11, 12, 13, 16, 17 and 18.

§ Witnesses Nos. 22 and 23.

One of the approvers attached to the dacoity commissioner's establishment at Hooghly is a witness in this calendar, Nobin Ghose. The magistrate's letter* attached to the first calendar,

* From the magistrate to the additional sessions judge of 24-Pergunnahs, No. 590, dated 1st July, 1856.

When recording my reasons for commitment in the case against Baluckdas Byragee and others, charged with dacoity (in the house of Nubo Das)

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which reached me after the case was closed, is worthy of a careful perusal. On the witness refusing before me to swear to the identification of any one of the prisoners at the bar voluntarily, it seemed to me, considering the character of the man and his being a professional witness on behalf of the State, that it would have been improper to press or examine him further than to ask him, as I did, what he had previously stated to the magistrate. The two statements cannot certainly be reconciled; but it is at the option of the Court to put faith in either of them nevertheless, if they think proper. For my own part, I am of opinion what the witness did and affirmed in the lower court cannot be accounted for in any other way but that it was the truth.

and with having belonged to a gang of dacoits, I omitted to mention several remarkable circumstances preceding and attending the evidence, given in this court by Nobin Ghose, the approver, witness No. 29, of the calendar. This omission was owing to my considering it unnecessary to enter into much detail on this point, regarding which I had caused some of the circumstances to be embodied in Nobin's deposition, on which I expected that he would be cross-examined at the trial. Fuller information on the point may, however, still be useful in deciding on the general charge against the prisoners, and I would accordingly take the liberty to supply the following, which I beg may be placed with, and considered as, part of my reasons for commitment on that charge.

Nobin Ghose, is a Nuddeah dacoit and a stranger to this part of the country. He has been for about two years an approver on the dacoity commissioner's establishment, and has constantly resided at Hooghly ever since his conviction. Since the arrest of Baluck Das and *his* gang, Nobin could not have seen them till the day on which he gave evidence before me. On that day he was sent from Hooghly by rail, Mr. Ward being aware that he had made the acquaintance of some Calpi dacoits when residing in that part of the country for a short time previously to, and when, evading arrest. The arrangements I made on the day of Nobin's arrival rendered it impossible that he could have seen Baluck Das and the other prisoners *before* giving his evidence. The prisoners remained locked up in one room while Nobin in another was giving me a description of the personal appearance of Baluck Das, prisoner No. 1, and Shookoor prisoner No. 3, with whom he said he had committed dacoity. After this I took him with me into the other room, which was filled with upwards of fifty men, from among whom Nobin picked out the prisoners Baluck, Shookoor, and Bydnath, stating them to be notorious dacoit associates of Narain Singh, a Midnapore Sirdar, lately transported. I may add that Nobin stated that prisoner Shookoor used to declare himself a chowkeedar, and on enquiry, it appeared that he had been so employed and imprisoned for neglect in that duty. The manner of Nobin so fully convinced me of the truth of his statements that I remarked, at the time he made them, that such evidence was, to my mind, perfectly conclusive.

If Nobin has, at the trial, failed again to point ont these men, it is a most unaccountable circumstance, and I trust that previously to the rejection of his evidence, he may be called upon to explain the discrepancy, as the precautions taken in bringing him from Hooghly render it u erly impossible that he can have been tampered with, and I think it not improbable tht he may still be able to give satisfactory reasons for not having been so explicit in his deposition before you as he was before this court.

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The first prisoner, Baluck Dass Byragee, pleads *not guilty;* claims as his own the brass utensils found in his house, and says he has witnesses to prove both this and *his good character.* Of the five witnesses* cited by him, none say either the property was his before 1852, or that he bears a good character. Prisoner No. 2 pleads not guilty; says the paper found in his house was his father-in-law's,* and declares the approver witness Hurree (No. 1,) owes him a grudge as he (prisoner) refused to remain on friendly terms with him (a dacoit!) after he (witness) had been found out in an intrigue with the witness Nursing's wife. This is a stale trick on the part of a dacoit to vent his revenge on a witness by abusing the females of his family, and if true, would, I think, go far to prove prisoner's association with the males of the family also; but the two witnesses† cited by the prisoner are unable to say a word in his favor on any point. One of the witnesses, *after* he had testified against the prisoner, was said by the latter not to be the man named by him; but it was ascertained he must have been, and a third the prisoner insisted on prompting, and I refused to record his evidence. The third prisoner pleads not guilty, and says that witness No. 1, (Hurree) and he are on bad terms as he got Hurree a beating once when he (prisoner) was the zemindar's "Nukdee," for not paying his rent. But, in the first place, the prisoner did not mention this in the foujdary; and in the second of his four witnesses‡ only one supports his story in any way of his own knowledge; and the one witness cited to character declares prisoner to be an honest man *because he has a cultivation,* which every dacoit invariably has. This prisoner was once imprisoned as a chowkeedar on suspicion of being in league with dacoits. Prisoner No. 4, pleads not guilty and cites witnesses to character. They are four§ in number, and say his character is good. Prisoner No 5, who now pleads like the rest not guilty, says the approver witness Nursing is his enemy as he (prisoner) ran off with his (Nursing's) wife. It will be remembered that the first prisoner charges the approver witness Hurree with an intrigue *with this same woman.* Of the prisoner's witnesses in support of this defence, and to prove his *not* being a dacoit, three of four have appeared.|| All they can say is, they think the prisoner an honest man. They add the witness Nursing is *unmarried:*—prisoner No. 6, was also, he says, a zemindar's "Nukdee," and he too had a quarrel about the witness Nursing's

* Nos. 30 to 34.

† Nos. 36 and 37.

‡ Nos. 39, 40, 41 and 61.

§ Nos. 39, 40, 42 and 43.

|| Nos. 46, 47 and 48.

* It is in evidence his father-in-law's name was *Rajoo* not *Ramchand.*

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Nos. 50, 51, 52 and 53.

wife, eight years ago. His witnesses speak well of his *character;* know nothing of the alleged intrigue; and give the name of prisoner's employer "as Shumbhoo Chunder Ghose," whereas prisoner himself said it was "Mohes Mitter." Prisoner No. 7, calls witnesses to character; says the darogah beat him to make him confess in the mofussil; and added he was persuaded to confess to the magistrate by the witnesses Hurree and Mirtonjye, *whom he had* never before seen. His witnesses are called to speak only to his character, and they say he bears a good character *as he cultivates land* and sells salt. Prisoner No. 8, has no special defence. His witnesses* speak well of his general reputation. Prisoner No. 9, declares witnesses Nos. 1 and 3, for the prosecution are old enemies of his on account of some previous dacoity in which all were concerned; but he said nothing of this in the magistrate's court, and his witnesses† are unable to say any thing in his favor, further than that one of them (No. 55,) admits prisoner was made to assist once in the arrest of the witness Nursing (No. 2,) *from being known to be an associate of his.* As far as the witnesses know, prisoner bears a good character. Prisoner No. 10, declares the approver witness Hurree *stole his wife.* It will be remembered this same Hurree has been previously made also to steal the witness Nursing's wife. He adds he complained to their joint landlord Joinarain in this matter, who gave the witness Hurree a beating. This was, he says, four or five years ago. He said nothing of all this in the lower court, and his witnesses‡ can say nothing in his behalf beyond this that he has a cultivation and is *therefore* an honest man.

Nos. 1 and 4.

Nos. 62, 63 and 64.

* Nos. 65, 66 and 67.

† Nos. 54, 55, 68 and 69.

‡ Nos. 57, 58, 59 and 60.

I have not the smallest doubt of the guilt of any one of the prisoners, whom I convict; Nos. 1, 2 and 4, of the first calendar of both dacoities and of having belonged to a gang of dacoits, and Nos. 3, 5, 6, 7, 8, 9 and 10, of the first calendar of the Mooregunga dacoity, and also of having belonged to a gang of dacoits, and I beg to recommend that Baluck Dass Byragee No. 1, Govind Manjee No. 2, and Lallchund Manjee No. 4, be sentenced to transportation for life, and the remaining seven to imprisonment in banishment with hard labor for sixteen years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, J. S. Torrens and C. B. Trevor.)

Mr. J. S. Torrens.—The occurrence of the dacoity in the house of the prosecutor, Nubboo Doss, on the 4th of August,

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1852, though not detected, or brought to notice by the police at the time, is fully proved by his evidence now given before the magistrate and sessions judge, as well as by the deposition on oath of Mr. Fraser, witness No. 28, who was informed of the dacoity by the prosecutor immediately after it occurred. The account which the prosecutor gives of it corresponds in its main features with that given by the approver, witnesses Nos. 1, 2 and 4, and there is full uniformity in the details of the parties, who formed the gang as to the manner in which they proceeded by boat to make the attack, the place in the *khal*, where it was left and as to how they returned to it with the plundered property; also as to the disposal of the same. The evidence of the approvers and the confessions of the confessing prisoners accords in all these points; as does also the statement of the prosecutor, as to the nature of the attack on the house, and the property which was plundered. Any slight discrepancies which occur on the whole are very far, in my opinion, from affording any grounds for rejecting the testimony of the several approvers; and it would only be on the supposition that a very deliberate and well contrived collusion and conspiracy had been carried on in the Allipore jail betwixt witnesses Nos. 1, 2 and 3, and elsewhere, betwixt the same and the prosecutor and witness No. 4, that the evidence could reasonably be set aside. That there was this collusion, I do not see any reason to suppose, both from the character of the magistrate, who conducted the investigation and the precautions which he certifies he adopted. Even if it were admitted that there was collusion amongst the first three witnesses, I cannot see that we are at all warranted in supposing that there could have been any betwixt them, and the witness, Mirtonjye No. 4, whom the magistrate and the keeper of the Allipore jail, both certify never to have had access to the witness, Hurree Pelloa from the time he gave his first disclosure to the witnesses Nos. 2 and 3, before his, Mirtonjye's evidence was recorded; yet this Mirtonjye's deposition corresponds as to details of the parties, who were concerned in the two dacoities, and as to the manner in which they were perpetrated, with the evidence of the others, and the statements of both prosecutors. As to the property sworn to by the prosecutor, Nubboo Dass, I do not see why one should discredit his evidence and that of his witnesses on the point. When the search took place, and since the dacoity in his house occurred, all suspicion that there would be a prosecution was at rest, as it had been from the first; and the retention of the property was therefore not surprising. I conceive the large brass jars of the description sworn to by the prosecutor are quite recognizable by natives who have used them; and taking into consideration all the circumstances of both the cases of dacoity, seeing no reason to discard the evidence of the approvers, the prosecutors

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and the other witnesses, I would sentence all the prisoners as recommended by the sessions court.

Mr. C. B. Trevor.—Of the prisoners before the court Nos. 1, 2 and 4, have been charged with having committed a dacoity, at Moreegunge, in the house of Nubboo Doss, and another at Gunmarah in that of Dhunee Bewa; and also with having belonged to a gang of dacoits; prisoners Nos. 3, 5, 6, 7, 8, 9 and 10, are charged with the first dacoity alone and with having belonged to a gang of dacoits.

It appears that on the 31st March last, the jailor of the Allipore jail reported to the magistrate of the 24-Pergunnahs, that "Hurree Purooa, concerned in the dacoity at Rungafollah was "desirous of giving information respecting two land dacoities "committed at Ghoranarol, thannah Ghataul, in Joteah Dhoo- "bee's house, and at Mooregunge, in the same thannah in Ram- "chand Doss's house; the dacoits were never traced, and the "plundered property in the *first* case is still concealed in the "house of one of the dacoits named Govind Roy at Rungafollah. "Hurree Purooa says that he was personally concerned in both "the above docoities, and is acquainted with all the dacoits; their "names are Baluck Byraghee, Mochee Bewa, Byednath Christian, "Meertunjee Mundul, Ramdhone Coomol, Govind Manjee, Shoba- "ram Haldar, Mudhoo Mundul, Shookoor Mussulman, Lallchand "Manjee, Nubokistmul and another man, whose name he cannot "remember."

Acting on this representation, the magistrate of the 24-Pergunnahs sent for the parties, in whose houses the dacoities were said to have occurred; Nubo Doss, the surviving brother of Ramchand Doss and Dhunee Bewa, the mother of Joteal, gave their depositions on the 19th April, acknowledged that the dacoities had occurred, and stated the circumstances attending their committal; in the dacoity at Ghoramarah, committed in December, 1854, or January, 1855, only eight rupees worth of property, whilst in that of Moregunga, committed on the 4th August, 1852, property of the value of 350 Rs. was carried away.

The confession of Hurree Purooa was taken by the magistrate on the 21st April, he repeated the statement which he had made to the jailor and added to the names then given, *that of Lallchand Shikaree a fellow prisoner of his*, who had been convicted with him in August last, of dacoities committed elsewhere; he was then sent into the mofussil to point out the parties whose names he had given, and he returned to Allipore, on the 25th April; the darogahs reporting that he was no longer required.

As to the fact of the two dacoities having occurred, that is amply proved by the evidence of the record; the only point for enquiry is, whether the evidence produced is sufficient to

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bring the crimes, with which they are charged, home to the prisoners.

The evidence produced is that of four approvers, three fellow-prisoners in the Allipore jail, and one Meertunjoi Mundul, a person named by Hurree Purooa, in his statement to the jailor; it is necessary to see in what position upon the record these parties stand, before their evidence as against third parties, can be properly weighed.

As befere observed, Hurree Purooa, on the 21st April, before the magistrate mentioned the name of his fellow-prisoner, Lallchand Shikaree as having been one of the gang committing these dacoities. Now having mentioned the name of one fellow-prisoner, there seems no good reason why he did not mention the name of the other; the magistrate evidently was under the impression that the names of both, Lallchand Shikaree and Nursing Gochait, as being concerned in the dacoities, were discovered from the *mofussil confessions;* and this impression seems from the 3rd paragraph of his report, to have been shared in by the sessions judge. As, however, the fact is not as represented by the sessions judge, the argument against collusion on the part of the approvers, drawn from the erroneous statement, falls to the ground and in its place must stand, the inference to be drawn from the mention of one, and the non-mention of the other of his fellow-prisoners.

The confession of Meertunjy Mundul, witness No. 4, was taken at the thannah, on the 26th April, after Hurree Purooa returned to Allipore, though he had been apprehended *on the 23rd at evening time* and in it the name of only one of his fellow-approvers, viz., Hurree Purooa, was mentioned as being concerned in these dacoities. It is of course probable that he did not, after an interval of nearly four years, remember all those who committed the Moregunga dacoity with him; but that he should remember the name of one only of his fellow-approvers, seems strange; and stranger still that not having mentioned any of the *other* approvers he should appear *with them* as a co-witness against other parties. The name of Nursing Gochait appears in the mofussil confession of Govind Manjee, prisoner No. 2, made on the 25th April; that of Lallchand Manjee, No. 4, made on the same date; and that of prisoner No. 5, Mudhoo Mundul, made on the 26th April; the name of Lallchand Shikaree appears in the mofussil confession of Govind Manjee, prisoner No. 2, made on the 25th April, that of Lallchand Manjee, prisoner No. 4, made on the same date; and that of prisoner No. 7, Kantoo Doss, made on the 2nd May; the confessions of the two approvers, Nursing Gochait and Lallchand Shikaree, were taken by the magistrate, *on the 28th April,* three days, that is, after Hurree Purooa had returned from the mofussil to the jail at Allipore.

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From the above facts, it is clear that Hurree Purooa was the party from whose information originated the present case; and that between him and his fellow approvers, Nursing Gochait and Lallchand Shikaree, either *before* he gave information to Mr. Floyd, or *after* his return from the mofussil, or whilst in the mofussil, looking to his fellow approver, Meertunjy Mundul, *there was every opportunity for collusion.* This being the case, it is necessary that their evidence against the prisoners should be corroborated by evidence, knowing that the prisoners now on their trial actually participated in the offences with which they are charged.

This corroboration is to be found in the present case either in the confession of the prisoners, or in the finding of property plundered by them and belonging to one of the prosecutors in their houses.

In the house of prisoner No. 1, who has throughout pleaded *not guilty*, three brass jars were found; which Nubboo Doss claimed as his. The property is not of a nature to be recognised after four years by a witness; so I put no confidence in the evidence on this head; there is nothing to connect this prisoner with the dacoity at Ghoramaral save the evidence of the approvers.

In the house of prisoner No. 2, was found a paper, which the judge writes, "he is not at all certain belongs to the prosecutor, Daboo Doss," he was apprehended on the 23rd April; and on the 25th, he confessed in the mofussil to having been a party to the dacoities at Ghoramaral and Moregunga; before the magistrate he acknowledges that others went, but that he did not go.

Against prisoner No. 3, there is nothing to corroborate the evidence of the approver as to his having been a party to the dacoity at Moregunga.

Against prisoner No. 4, there is only a mofussil confession to confirm the statement of the approver as to his having been concerned in both dacoities.

Against the remaining prisoners, there is nothing upon which any reliance can be placed to corroborate the evidence of the approvers as to their being concerned in the dacoity, at Moregunga. The confession before the magistrate said to have been made by prisoners Nos. 6 and 7, amounts to no confession at all. As then in the present case, the evidence of the approvers was not given under circumstances, which allow of my being satisfied with confirmatory evidence of the *occurrence* of the crimes laid to the charge of the prisoners *only;* and as the confirmatory evidence produced to *connect the prisoners with the crimes* seems to be unsatisfactory and insufficient, I consider them entitled to their release.

Mr. H. T. Raikes.—I gather from the record of this case that

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the approvers, Nos. 1, 2 and 3, are undergoing sentence of sixteen years' imprisonment for dacoity in the Allipore jail; and that approver, No. 1, after being in jail about a twelvemonth, intimated to the jailor that he was willing to give information against his associates in the dacoities now charged; and the magistrate of the 24-Pergunnahs, having learnt this, and having ascertained that the dacoities had really occurred, sent out approver, No. 1, into the mofussil with the police darogah of Kaleeghat to aid the police darogah of the thannah, where the dacoities had occurred. In this way the persons identified by the approver, No. 1, were apprehended, and most of them are said to have confessed to the police while in their hands; but on coming before the magistrate, all but four repudiated their confessions entirely, three of these gave qualified admissions of guilt; and the fourth was made approver, No. 4, in support of the charge against the prisoners.

The dacoities charged, were committed three or four years ago, and never reported. There seems, however, reason to believe that they really occurred. On this point, it may be supposed the approver, who first gave information, spoke the truth; the chief point of importance is, whether the statement of this man and of the other approvers can be received as *conclusive* against the prisoners, as the parties really implicated in the commission of the crimes.

Approver, No. 1, Hurree Purooa, named some of the dacoits to the jailor; who wrote their names in a letter to the magistrate, on the 31st of March last, and on the 21st of April Hurree Purooa gave a detailed account to the magistrate. He then enumerated fifteen persons as concerned, among whom appear the names of the approvers, Nos. 3 and 4, and prisoners Nos. 1, 2, 3, 4, 5, 8, 9 and 10, but *not the approver, No.* 2, or the prisoners, Nos. 6 and 7.

Approver, No. 3, who was incarcerated with approver, No. 1, and is named by him on the 21st April, though not to the jailor, is not examined until the 28th of April, after approver, No. 1, had been into the mofussil and pointed out those accused by him. Why this man's examination was so long delayed, if it was intended to make use of him as an approver, or whether he at first refused to peach; or why, if he refused, he was afterward admitted as a witness, or agreed to become one, is not explained.

It is, however, certain that his name appears in the statement made by No. 1, approver, on the 21st April, and cannot be confounded with the name of No. 4, prisoner, as it is distinguished by the addition of *shikaree* and the circumstance of his being a fellow-convict is mentioned.

This man then in his first examination on the 28th of April, named the three other approvers, this being the *first* mention of approver, *No.* 2, by any of his *fellow-approvers*, he also named

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prisoners, Nos. 1, 2, 3, 4, 6, 7 and 9, omitting the names of Nos. 5, 8 and 10, though enumerating altogether as many as twenty-one accomplices.

The approver, No. 2, was also examined on the 28th of April, his complicity having apparently been ascertained from *mofussil confessions of the prisoners;* and he named his fellow-approvers, Nos. 1 and 3, his fellow-convicts; but *omitted* the name of *approver, No.* 4, the *confessing prisoner* afterwards made approver; and mentioned all the prisoners, with the exception of No. 7.

On the 28th of April, approver, No. 4, repeated to the magistrate, a confession he had made in the mofussil; and accused as his accomplices in *one* of the dacoities charged, approver, No. 1, who had procured his arrest, and the prisoners, Nos. 1, 2, 3, 4, 6 and 9, omitting all mention, both to the magistrate and the police, of the *approvers, Nos.* 2 *and* 3, (only examined on the same day) and of the prisoners, Nos. 5, 7, 8 and 10. His confession also is wanting in all particulars of the dacoity, or of the property acquired by it.

Looking back then to the time when, and the circumstances under which, these approvers first came forward with their respective statements, I find that three of these men *had been confederates in crime and had been in jail together for more than a twelvemonth,* and, it is presumable, were in constant communication with each other; their statements were not taken down simultaneously, but two of them were examined, after an interval of a week at least; that though coinciding in some parts, their respective statements vary, not only as to the names of the prisoners accused by them, but as to their own complicity as associates in the crimes they refer to; and while *two* of the *three* convicts only mention the fourth approver, that approver omits to mention the names of two of the others; the reason apparently being, that the two approvers omitted by him *had not come forward at all in that character, when he gave his confession before the police darogah.*

With these glaring inconsistencies in their first statements and with so much reason to believe that the approvers had the means of knowing what individuals had been named by their confederates, the *coincidence* of their several statements on some points, and regarding *some* of the prisoners, loses its force as a voucher of their good faith, and leaves the Court to depend upon the corroborative proof alone as a test and surety of the truth of their statements in identifying the prisoners as their real associates in the crimes imputed to them.

The corroborative proof in the case of dacoity in Nubo Doss's house consists of the so-called confessions of prisoners, Nos. 2, 6 and 7, and the discovery of property in the houses of Nos. 1, 2 and 10.

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I do not regard the confessions of Nos. 2 and 6, as admissions of guilt, and though No. 7 goes so far as to admit having known that the dacoity at Nubo Doss's was committed by others, those mentioned by him are not identical with those accused by the approvers; and the name of only one of the approvers is given by him either in the mofussil or foujdary; and when pleading *not guilty* at the sessions, this prisoner states he was induced to admit a guilty knowledge of the dacoity under persuasions of the other approvers, that he should be made a witness on the trial. The statements of these three prisoners are not therefore confirmatory of the charges, as deposed to by the approvers; and are not in themselves sufficient evidence of guilt.

Two brass pots were found in the house of prisoner, No. 1, who claims them as his own and has denied throughout. I agree with Mr. Trevor, that after the lapse of four years, the evidence of witnesses to their recognition cannot be relied upon.

The other articles found, claimed by the prosecutor, are, a written document and a fishing-net, which the sessions judge does not hold to have been sufficiently identified by the prosecutor; the prisoners therefore, in whose houses they were found, are not compromised by their possession; against the remaining prisoners, independent evidence confirmatory of the approvers' depositions is wanting, unless the mofussil confessions of ten of them could be received as such; but these again are unsupported; and as the approvers' statements are, for the reasons given when weighing their value, open to question, on the ground that they were not given under circumstances which afford any guarantee for their truth and honesty, I concur with Mr. Trevor, in acquitting the prisoners charged with this dacoity in Nubo Doss's house.

In the other dacoity, only prisoners, Nos. 1, 2 and 3, have been convicted by the sessions judge, the approvers, Hurree Purooa, Nursing Gochait and Mirtunjoy Mundul, being approvers; Nos. 1, 2 and 4, of the last case are the witnesses against them. The remarks regarding these witnesses are equally applicable to their statements in this case as in the previous one, with the addition that I am at a loss to know why Mirtunjoy Mundul was selected as an approver in this case, after stating in his confession, in the other trial, that he was never engaged in this dacoity and knew nothing about it.

I do not see any intermediate confession of guilt; but the making him an approver in one seems to have led to his detailing the circumstances of the other.

The confirmatory proof offered in this case only affects the prisoner, No. 2, and consists of a brass *thalee*, which, it is said, he admitted having received as part of the plunder and which had to be traced by the police, through the possession of several

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parties, to the hands of the witness with whom it was discovered. The foujdary defence of this man does not implicate him in any respect; and as the approvers' evidence thus stands alone, I concur with Mr. Trevor, in directing the release of all the prisoners.

Before closing these remarks, I have to observe upon the additional sessions judge's proceedings as follows.

The additional sessions judge convicted three of the ten prisoners committed for trial on the charges contained in the two calendars, and recommended they should be transported for life. A reference to the Sudder was necessary to give effect to that conviction; but the judge convicted the remaining seven prisoners of dacoity, as charged, and of belonging to a gang of dacoits, recommending for them a sentence of sixteen years' imprisonment with hard labor in banishment.

As the offences, for which the conviction of these seven men was recorded, were within the jurisdiction of the sessions court to punish, and the punishment proposed within the competency of the sessions judge to inflict, there was no necessity to refer their sentence for confirmation, the Sudder Court being competent to revise the proceedings with reference to them or not as they might think advisable. This power in the Court, however, does not leave it optional with the sessions judge to refer the case of any other prisoners, except those whose sentence requires the confirmation of the Court.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

DAMUN LALL

versus

GUNGA.

Sarun. 1856. October 25. Case of GUNGA. Appeal rejected.

CRIME CHARGED.—1st count, being accessary both before and after the fact in a burglary and robbery committed in the plaintiff's house, by Kemraj and others of gold and silver ornaments, value Rs. 1,543-8, the property of Rambhunjunlall owner of the house: 2nd count, knowingly receiving and having in his possession, (property of the value of Rs. 160-10,) a portion of the above stolen property, (in concert with his son the above Kemraj.)

CRIME ESTABLISHED.—Knowingly receiving and having in his possession a portion of the stolen property belonging to Rambhunjun, plaintiff, and of being privy to the burglary and theft committed in the said plaintiff's house.

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Case of GUNGA.

Committing Officer.—Mr. J. F. Lynch, deputy magistrate of Sewan, with full powers of magistrate.

Tried before Mr. Henry Atherton, sessions judge of Sarun, on the 21st August, 1856.

Remarks by the sessions judge.—This prisoner has been re-committed after re-trial, in accordance with the instructions conveyed by the Court's letter No. 352,* of the 2nd May last, in reply to mine of the 25th March, No. 36, which contains a full account of the case. Copy of paragraph 3 is now submitted, and it will be sufficient here to state that the crime, as specified, is fully established against the prisoner, Gunga, (No. 2, in the former case) by the evidence of the witnesses again examined, viz., Nos. 1. 2, 3, 5, 6, 7, 8 and 9. The prisoner says he has been accused through enmity, but this is neither proved nor probable. His wife was in the service of the man robbed, and his son one of the chief parties implicated, and there is no doubt of his guilt. He is an old man and having been already confined some months I sentence him as noted.

Para. 3. "On the night of the 9th December last, a burglary was committed in the premises of Rambhunjunlall and three boxes of gold and silver ornaments were stolen from a room, close to which the prisoner No. 5, Musst. Parbuttea, servant of Rambhunjun, was sleeping. Suspicion fell at once on this woman, who, being questioned, at last told her master to send for her son and husband, prisoners Nos. 1 and 2, who would tell him about the theft. These parties were brought to the house and sent off with Heera, witness No. 1, and another person and soon returned with a bundle containing some of the stolen ornaments Nos. 1 to 11, inclusive, which were given up to the owner by these parties in the pre-

No. 1, Heera.

* *Resolution of the Presidency Court of Nizamut Adawlut*—*No.* 352 of the 2nd May 1856. (Present: Messrs B. J. Colvin and J. H. Patton.)

The Court observe that the prisoner Gunga was, on apprehension, only asked what his answer was to the charge of giving up the stolen property of Rambunjanlal. When he was warned that he was committed to the sessions, he was not informed of the crime for which he was committed; he was, however, committed on a charge of burglary and theft of ornaments, and, on a second count, of knowingly receiving stolen property. This was an informality which required that the proceedings of commitment should have been quashed. It was not a case of defective commitment to which the circular order No. 70 dated 14th November, 1851, is applicable, for the commitment was a higher charge than that to which the prisoner had answered before the committing officer. That circular order is no bar to holding a new trial on the case of proceedings quashed. The Court therefore direct that the proceedings of commitment and trial of prisoner No. 2, Gunga, be quashed. The sessions judge will direct the magistrate to investigate the charge against him de novo, and if there be grounds for commitment, to commit him in proper form.

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Case of GUNGA.

No. 1, Heera.
„ 2, Mohabir.
„ 3, Goona.
„ 4, Girdaree.
„ 5, Mudoo.
„ 6, Nund Pandey.

sence of witnesses Nos. 1, 2, 3, 4, 5 and 6. Kemraj, prisoner No. 1, escaped from the prosecutor's at night and the next morning, notice was sent to the darogah, who, in consequence of the statements made by the two first seized, apprehended Nos. 3, 4 and 6, Purboo, Gooman and Musst. Billa. In Purboo's house nothing was found, but from a hole in a field, a bundle of ornaments Nos. 14 to 38, was produced by Gooman, before witnesses Nos. 10, 11, 13 and 14, the spot where they were buried being pointed out by Gooman and his mother-in-law, Musst. Billa, who had, by Gooman's directions, placed some ashes there to mark it. Purboo's statement led to the seizure of Hurruk, prisoner No. 7, and Joda, No. 8, and his mother No. 11, Musst. Mungree, who had, viz., prisoners Nos. 7 and 8, purchased some of the stolen property. The articles Nos. 12 and 13, brought by Hurruk had been instantly pawned to the prisoner No. 9, Kullut Sha, who gave them up, on being apprehended, before witnesses Nos. 16, 17 and 18. Kemraj was shortly afterwards apprehended, and as well as his wife, prisoner No. 10, Musst. Phoolesseree, sent in by the darogah to the deputy magistrate, by whom the case was committed to the sessions; the answers of some of the prisoners having been first of all taken on their arrival at the station, Sewan, by the moonsiff, owing to the deputy magistrate's absence."

No. 10, Doorga.
„ 11, Purmeshur.
„ 13, Audlin.
„ 14, B de Tewary.

No. 16, Rak.
„ 17, Gouree.
„ 18, Jyngoor.

Sentence passed by the lower court.—To be imprisoned with labor in irons for four years from the 21st August, 1856 and to pay a fine of 200 Rupees under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) I see no reason to interfere with the conviction and sentence passed by the sessions judge; the appeal is accordingly rejected.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
E. A. SAMUELLS AND D. I. MONEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

ROOPADHUR GEEREE (No. 19,) AND NARAIN MULLICK (No. 20.)

Midnapore.

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Case of ROOPADHUR GEEREE and another.

Under the circumstances, the majority of the Court, distrusting the evidence, the prisoners were acquitted of belonging to dacoit gangs.

CRIME CHARGED.—1st count, dacoity in the house of Ramhurry Chuckerbutty (deceased), master of Gopal Chund Doss (plaintiff), inhabitant of Anoory, thannah Nemal; 2nd count, dacoity in the house of Chukoo Berah, resident of Noyapara, thannah Nemal; 3rd count, dacoity in the house of Rugghoonath Doss, resident of Dechee Pyekparah, thannah Nemal; 4th count, being by profession dacoits and having belonged to a gang of dacoits under sirdars, Dhunnoo Bhooya and others, convicts.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 30th of July, 1856.

Remarks by the officiating sessions judge.—The prisoners plead "*not guilty.*" Three approver witnesses speak to the identity of the prisoners and denounce them as having been engaged with them, respectively, in the dacoities with which they are charged.

Nuthee No. 175, dacoity in the house of Ramhurry Chuckerbutty.

Nuthee No. 246, dacoity in the house of Chukoo Berah.

Nuthee No. 469, dacoity in the house of Rugghoonath Doss.

In corroboration and support of their testimony, the records of the cases noted in the margin have been laid before the court. The record No. 175, shows that a dacoity was committed in the house of Ramhurry Chuckerbutty on the 26th May, 1841. The master of the house was killed on the occasion; but there is no mention to be found in it either of the witnesses, or prisoners in this trial. From the record of the case No. 246, it appears a dacoity took place in the house of Chukoo Berah, on 23rd April, 1844. The prosecutor swore before the police that he had recognised Kishen Jana, Kartick Mundul and others, and that his brother Sahibram had wounded a dacoit. The darogah of police went in search, and at Jussobeesa found one Sonadhur Jana, cousin of Kishore Jana aforesaid with the mark of a blow of a club on the left arm. Sonadhur, in his examination, taken on the 28th

April, 1844, though he did not admit he had accompanied the dacoits, stated that on the previous Monday he had seen Kanoo Jana, Roopadhur Geeree, the prisoner No. 19, Narain Mullick, the prisoner No. 20, Dhunoo Doss, witness No. 1 of this trial, Parbutty Jana and Dhunnoo Bag collect at Kisto Jana's, and consult about the dacoity.

The witness No. 1, Dhunnoo, was arrested and *gillaff* No. 5, found in his house, which the prosecutor and his witnesses Rajon Seet, Doyaram and Kalee Churn swore to the property of Chukoo Berah. The prisoner failed to prove it to belong to him by the first witnesses he named, viz. Beem and Sumboo.

The prisoner No. 19 was also arrested and a *dhotee* No. 6, found in his house, was also recognised by the prosecutor and two witnesses.

The prisoner No. 20 was also apprehended and the mark of a blow from a club was apparent on his shoulder.

The record of the case No. 469, shows that a dacoity was committed in the house of Rugghoonath Doss on the 16th May, 1852. The prosecutor on the following day swore that he recognised Nokowree, Ram Mundul, Narain Mullick, prisoner No. 20, Roopadhur Geeree, prisoner No. 19, and others. The prisoners were apprehended on 18th May and denied the charge, no mention, however, of the witnesses No. 2 Dhunnoo Booeeah and No. 3 Mudhoo Booeeah is made in this record.

There are extraordinary deviations in the depositions of these two witnesses taken before this court, from what they stated in their confessions before the assistant commissioner which induces me to receive their testimony with much caution. In the record of the two dacoities in which these men depose they were engaged, no mention whatever is made of themselves. The two prisoners, however, were recognised by the prosecutor in the last dacoity and were arrested.

The record of the case No. 246, however, so fully and strongly corroborates the testimony of the witness Dhunnoo Doss, No. 1, that there is no reason to doubt that the prisoners did accompany the gang which committed the dacoity. I would convict them therefore of the offence of having belonged to a gang of dacoits and recommend that they be transported for life.

Remarks by the Nizamut Adawlut,—(Present: Messrs. H. T. Raikes, E. A. Samuells, and D. I. Money) *recorded on the* 19*th and* 24*th Sept.* 1856.

Mr. E. A. Samuells.—The discrepancies between the depositions and confessions of the witnesses, Nos. 2 and 3, which the judge notices are confined, I observe, to matters which affect themselves personally, such as the amount of money they received on the occasion of a particular dacoity and so on. If these discrepancies prove any thing, they would prove that the wit-

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nesses were not present at the dacoity they described; but as it is very improbable that they should have confessed voluntarily before the assistant commissioner to dacoities which they did not commit, in the full knowledge that they were thereby incurring the penalty of imprisonment for life, I am inclined to think that the discrepancies referred to are attributable either to carelessness or defective memory. There is no discrepancy with regard to the fact of the prisoners now before the Court having been present at the different dacoities mentioned; and the depositions of witnesses, Nos. 2 and 3, on this point, as well as that of the witness, Dhunnoo Doss witness No. 1, whose testimony is unimpeached, is strongly corroborated by the records of the two cases Nos. 246 and 469, in both of which, the prisoners were apprehended under circumstances which afforded a strong presumption of their guilt, although the evidence against them was not at the time deemed sufficiently conclusive to warrant their committal to the sessions court. The prisoners have entirely failed to prove any enmity or other improper motive on the part of the approvers in the present case, and one of their own witnesses emphatically states that they are bad characters. I have no doubt of their belonging to a gang of dacoits and accordingly sentence them, as recommended by the sessions judge.

I observe that the charge in this case is clumsily drawn up. The intention of the assistant commissioner obviously was to charge the prisoners with being members of a gang of dacoits, inasmuch as they had been present at the different dacoities mentioned. Instead of this, their complicity in each dacoity is made the subject of a distinct charge or count; and the real charge of being professional dacoits occupies the last count; and is apparently unconnected with those which precede it. The judge will be good enough to call the attention of the assistant commissioner to this matter.

Mr. D. I. Money.—I cannot, upon the evidence before me, concur in the conviction of the prisoners.

There are the records of three dacoities charged against the prisoners, and there are three approvers to substantiate the charges. In the first record of the dacoity, committed in the house of Ramhurry Chuckerbutty, on the 26th May, 1841, the judge himself states that "there is no mention to be found in it either of the witnesses or prisoners in this trial."

Our consideration, therefore, of the charges against the prisoners is limited to the second and third records.

In the second record of the dacoity, committed in the house of Chukoo Berah, on the 22nd April, 1844, the prisoners were named in the confession of one Sonadhur Jana, who stated that the day previous to the dacoity, they, together with the approver Dhunnoo Doss and others, met together to consult about it.

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They were apprehended and charged with this dacoity but acquitted.

It is a question whether upon a similar indictment, the offence being one and the same, they could be convicted on the 2nd count, in the calendar.

In the record of this dacoity of the three approvers Dhunnoo Doss alone appears.

We come to the third record of the dacoity committed in the house of Ruggoonath Doss on the 16th May, 1852.

There is no mention in this record, as the judge states, of the approvers, Dhunnoo Booeah and Muddoo Booeah. The prisoners were apprehended on the recognition only of the prosecutor, and acquitted, and it is a question, as in the other case, whether they could, for the same offence on the same indictment, be convicted on the 3rd count in the calendar.

It remains to be seen how far the approvers implicate the prisoners, so as to form a just ground for their conviction on the 4th count in the calendar.

The judge receives the testimony of the approvers, Dhunnoo Booeah and Mudhoo Booeah, "with great caution." He remarks that there are extraordinary deviations in their depositions taken before him from what they stated in their confessions before the assistant commissioner.

But he relies on the 2nd record, as fully corroborating the testimony of the approver Dhunnoo Doss, and believing the prisoners, upon this corroboration, to have accompanied the gang, which committed the dacoity therein recorded, convicts them on the 4th count in the calendar.

Now, independently of the evidence, I doubt whether such a conviction is just. Admitting it to be proved that the prisoners accompanied the gang which committed the dacoity in this case, the proof of having *once accompanied* a gang for such a purpose is no proof of having *professionally belonged to a gang of dacoits;* and it is only upon such proof being adduced, and so complete as to admit of no doubt, that a sentence of transportation for life, under Act XXIV. of 1843, could be passed.

In the despatch of the Court of Directors, dated 4th September, 1844, and circulated by this court on the 30th January, 1845, the criminal authorities are enjoined a cautious exercise of the powers conferred upon them by this Act. See following extract from paragraph 33. "We do not withhold our sanction even of an enactment of so great severity, for an object of such incalculable benefit to society, as the effectual suppression of dacoity; but we must earnestly call your attention to the caution addressed to you in our judicial despatch of the 28th August, 1839, to be on your guard against the abuse and oppression, to which the systematic and exclusive employment of *approvers* for the conviction of accused persons is necessarily

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liable. The testimony of men, by their own acknowledgment stained with the same crime which they lay to the charge of others, stands always in need of some corroborative evidence; and if it be received with favor or without distrust, may from vindictive or selfish motives, or even from mere wantonness be turned equally against the innocent and the guilty."

The evidence against the prisoners appears to me to amount only to a strong suspicion. I discredit entirely the testimony of the approvers, Dhunnoo Booeah and Mudhoo Booeah. Their statements before the assistant commissioner and the sessions judge are contradictory in several points. Confessions of accomplices should in all cases be admitted with great caution, and when admitted must be taken in their entirety. In trials, where the judgment is based mainly on the evidence of approvers, that evidence must be consistent throughout, and the evidence before the dacoity commissioner should perfectly agree with the evidence before the sessions judge. Where this is not the case, however strong may be the suspicion raised by the evidence, the prisoners, upon whom a sentence of transportation for life hangs, should, in my opinion, have the benefit of the doubt. We cannot be too careful in our estimate of the trustworthiness of the evidence of approvers or too cautious, where such evidence is not fully corroborated by other evidence, direct or circumstantial, in giving to it more than its due weight and credibility for the conviction of the prisoners.

The evidence of the approver Dhunnoo Doss implicates the prisoners in the dacoity in the second record, but is not, I think, sufficient to convict them on the 4th count in the calendar. I therefore acquit them of the charge and would direct their immediate release.

Mr. H. T. Raikes—From reading Mr. Money's remarks on this case, it would appear that the prisoners have already been acquitted on two of the three charges of dacoities preferred in this indictment; and Mr. Money therefore thinks it may be a question whether they can be again tried for the same offences.

I do not find that the prisoners have pleaded this; nor can I discover from what paper on the record Mr. Money has ascertained this fact; but as in the event of its being the case, there can be no question that these men could not be a second time put upon their trial for any *consequences* arising out of an offence, of which they have been acquitted already, the third count, in this indictment could not be made good as arising out of the dacoities of which they were acquitted. A report on this point must therefore be called for from the sessions judge.

If the charge originally made against these prisoners in the dacoities, named in the present indictment, did not result in committal to the sessions, it could not operate as a bar to the charge, being repeated; as the release by any subordinate court

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will not amount to an acquittal, by a competent tribunal, or bar the institution of fresh proceedings against the prisoners.

With reference to Mr. Raikes' remarks, the following letter was addressed to the sessions judge.

From the register of the Nizamut Adawlut to the officiating sessions judge of Midnapore, No. 845, dated 24th September, 1856.

With reference to your letter No. 224, of the 30th of July last, referring the case of Roopadhur Geeree and Narain Mullick, charged with dacoity, being by profession dacoits and having belonged to a gang of dacoits, I am directed by the Court to forward to you the accompanying remarks recorded by one of the presiding judges, and to request that you will furnish the report therein required, with as little delay as possible.

The sessions judge, in reply, submitted the following letter.

From the officiating sessions judge of Midnapore, to the register of the Nizamut Adawlut, No. 283, dated 15th October, 1856.

Agreeably to the instructions of the Court conveyed in your letter No. 845, dated the 24th ultimo, received on the 5th instant, I have the honor to report as follows.

That no doubt on the subject might remain I called on the committing officer to furnish a report on the subject, copy of which I have the honor to submit.

In one of the three dacoities charged, viz., that committed in the house of Ramhurry Chuckerbutty, the prisoners, Roopadhur Geeree, No. 19, and Narain Mullick, No. 20, were not even arrested.

In the 2nd case, the dacoity in Chukoo Bearer's house, it is evident from the *roobucaree*, dated 25th May, 1844, that both the prisoners were discharged by the magistrate, who at the same time ordered an enquiry into their character. Sonadhur Jana was alone committed on 15th June, 1844, a copy of the *roobucaree* is submitted.

This enquiry resulted in a requisition of security for good behaviour in the sum of 50 Rs. from the prisoner, Narain Mullick, who, in default of furnishing it, was imprisoned for one year. The police darogah found no grounds for sending in Roopadhur Geeree as a bad character and discharged him.

In the 3rd case, the dacoity in the house of Ruggoonath Das, the prisoners were arrested on the recognition of the prosecutor, but the darogah did not deem this sufficient ground for sending them even to the magistrate's court.

I trust the above will satisfy the Court that the prisoners were not committed for trial at the sessions for the dacoities with which they are now charged.

On receipt of this reply the case was again laid before Mr. Raikes, who recorded the following minute on the 25th October, 1856.

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Mr. H. T. Raikes.—The only witnesses examined were three approvers who have given evidence merely in a *general way*, that the prisoners were concerned with them in one or other of the dacoities charged; but the approvers at the trial entered into no detailed particulars of the different dacoities; and it would appear from their referring to their confessions before the assistant superintendent, that the sessions judge contented himself with those papers as affording the necessary details of the crimes charged.

This is obviously a most irregular mode of taking evidence as to material facts, proof of which is essential to establish the prisoners' guilt. Those first examinations, which have thus been allowed to act against the prisoners, should have been used as tests of the truth and accuracy of the after-depositions given by these persons, on oath at the trial; and their remarkable similarity, with, or material deviation from, each other would have given the sessions judge, some data for judging of the credibility of these men as eye-witnesses of the facts they deposed to.

As the depositions now stand on the record, they are so entirely barren of all details, that had the evidence conveyed by them been given by a better class of witnesses, it would have been unsafe to trust to it alone; but coming as it does from associates in the very crimes it professes to establish,—and unsupported by independent proof, except as to the occurrences referred to, I hold it to be altogether inadequate for the purposes of a conviction; and therefore coincide with Mr. Money in releasing the prisoners.

PRESENT:

H. T. RAIKES, Esq. *Judge.*

BHUGWAN SAHOO AND ANOTHER

versus

SHEWBUKSH CHOWKEEDAR (No. 1,) AND MEGHBARAN (No. 2.)

Sarun.

1856.

October 25.

Case of SHEWBUKSH CHOWKEEDAR and another.

Conviction by lower court of attempt at burglary upheld. One prisoner being a chowkidar, the case was committed to the sessions. This was no aggravation as regarded the other prisoner whose sentence was mitigated.

CRIME CHARGED.—Attempt at burglary with intent to commit theft and assault.

CRIME ESTABLISHED.—The same as crime charged. .

Committing Officer.—Mr. W. F. McDonell, magistrate of Sarun.

Tried before Mr. Henry Atherton, sessions judge of Sarun, on the 21st August, 1856.

Remarks by the sessions judge.—This is a case very creditable to the bustee chowkeedars of plaintiff's village, witnesses Nos. 1 and 2. They were on their rounds at night when they observed two thieves making a hole in the wall of the plaintiff's house and others standing by them. The thieves attacked the chowkeedars but were resolutely opposed, one of the thieves being so severely handled by the witnesses Nos. 1 and 2, of whom No. 2 is a very powerful man, that he died of the injuries received a few days after he arrived at this station. The row brought to the chowkeedar's aid without delay three of the villagers witnesses Nos. 3, 4 and 5, who, as well as the chowkeedars, recognised the prisoners and another absent named Sohun. These three men were at once named and there is no reason whatever for thinking that they would have been named if not identified, because they do not belong to *bustee*, and there is no enmity between their accusers and themselves. One of the three, however, Sohun, did, till lately belong to *bustee*, and used often to be visited by his connexions, the prisoners, with whom, in consequence, the villagers were well acquainted. The charge is denied by the prisoners, but there is nothing to support their defence, and I therefore concur with the law officer in their conviction.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—Present: Mr. H. T. Raikes.) The prisoners plead in appeal that the charge against them was, in the first instance, taken up and tried by the magistrate, who sentenced them each to three years' imprisonment, from which sentence they appealed to the sessions judge, who directed the magistrate to revise the proceedings, which resulted in their being committed to the sessions for trial and sentenced

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to seven years' imprisonment. This they take exception to, on the ground that an appeal can only be used in favour of the party appealing either by release or mitigation of punishment, whereas their appeal to the sessions judge has been attended with evident disadvantage to themselves.

There is no mention of this on record; but I observe the magistrate, in the calendar of commitment, states that the commitment is rendered necessary in consequence of one of the prisoners being a chowkeedar. This, therefore, clearly affords just and valid grounds for making over the prisoners for trial to the sessions; and had the magistrate, as alleged previously, sentenced the prisoners, the sessions judge was quite right to annul the sentence as for an offence committed by a person which took it out of the magistrate's cognizance to punish; there is therefore no validity in the plea raised by the appellants against the order or proceedings of the sessions judge.

On the merits of the case, the testimony of the eye-witnesses is fully sufficient to justify the conviction; and I see no reason to interfere on that ground with the conviction and with the sentence passed on the prisoner, Shewbuksh chowkeedar; but as the commitment purports to have been made solely on the ground of one of the culprits having been at the time a chowkeedar, the other whose offence is not aggravated by that special circumstance is entitled, under Circular Order 234, of the 30th October, 1846, to the benefit of the rule there laid down. I therefore mitigate the sentence passed upon Meghbaran, prisoner No. 2, to three years' imprisonment with labor and irons.

PRESENT:

E. A. SAMUELLS AND D. I. MONEY, ESQS.,

Officiating Judges.

GOVERNMENT AND PATSHAE TANTEE

versus

RAJAH HURREEHUR SINGH.

Chota Nagpore.

1856. October 27. Case of RAJAH HURREEHUR SINGH.

CRIME CHARGED.—Accessary before and after the fact to the case of wilful murder of Sadhoochurn Tantee son of the prosecutor, and aiding and abetting in the escape of the runaway Benimadhub Singh, the principal offender in the aforesaid case of wilful murder.

Committing Officer.—Capt. G. N. Oakes, officiating principal assistant commissioner of Manbhoom division.

A jungle chief, Rajah

Tried before Major J. Hannyington, deputy commissioner of Chota Nagpore, on the 20th August, 1856.

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in Chota Nagpore, convicted of being accessary before the fact to a murder (in which torture was employed) and imprisoned for 10 years in banishment with labor instead of being transported, as proposed by the deputy commissioner. It was irregular in the assistant commissioner after placing prisoner on trial on a charge of accessaryship to murder, without disposing thereof, to treat the case as a police offence merely, and punish for that. The committing officer ought to have charged prisoner in the calendar with murder. Conviction of accessaryship after the fact, as held by the lower court, could not under the circumstances be sustained.

Remarks by the deputy commissioner.—The prisoner pleads *not guilty.*

The particulars of this case having been already before the Court, with the proceedings on the trial of Baluck Dass and others, submitted with my letter No. 7 dated 9th January, 1855, a brief statement of the fact will here be sufficient.

On the night of the 27th April, 1854, some idols and other property were stolen from the house of the prisoner, who, on the 1st May sent up to the principal assistant commissioner of Manbhoom, the written information dated 30th April, of the attendant on the idols.

The prisoner, at the same time intimated that the attendant having, for the present, declined to institute enquiry, the prisoner could not make any.

But on the 1st May, Chamtoo Mahto and Seeboo Pan appeared and deposed before the principal assistant commissioner that several persons had, on the previous day, 30th April, the date of the prisoner's report, been taken up and tortured by the prisoner's brother. Wherefore they prayed for protection. An order prohibiting harsh measures was then issued to the prisoner who, on the 13th May, replied, stating that no harsh measures had been used, and that certain persons who were taken up had been, for want of proof, discharged.

On the 13th May, the date of the report just mentioned, the body of Sadhoochurn Tantee was brought to the principal assistant commissioner. It bore marks indicating that tortures of the most revolting kind had been inflicted on the deceased and the medical officer, who made a *post mortem* examination, reported that these had been the cause of death.

It appears in evidence* that the deceased Sadhoochurn Tantee and others were put to torture within the precincts of the prisoner's place of residence and within a few paces of his dwelling-house; that the prisoner saw the deceased and others while being so tortured; that he was consenting thereto; that after such torture had been inflicted, on Sadoochurn Tanteeand others, the prisoner certified† to the principal assistant commissioner that no person had been tortured; and that the prisoner endeavoured to prevent a complaint of the torture being made to the principal assistant commissioner.

The prisoner, in his defence, pleads that he has been heretofore convicted and punished for the offence now charged; that for three days immediately following the robbery of the idols, he

* No. 1, Ujoodhiaram Mahto.
" 2, Kassee Mahto.
" 3, Kangloo Bhuckut.
" 4, Dhunaram Bhuckut.
" 5, Lukhun Bhoounj.
" 6, Kaleechurn Mahto.
" 7, Ramdhun Tantee.
" 10, Gooroochurn Tantee.
" 11, Chamtoo Mahto.

† No. 19¼, Gopeenath Dutt.
" 19½, Gooroodass Adikaree.

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was engaged in a religious ceremony that precluded his cognizance of any thing passing within the precincts of his place of residence; and that he has used all reasonable diligence to apprehend the parties for whose apprehension orders have been issued.

The evidence of the witnesses* for the defence is, that immediately after the robbery of the idols, the prisoner was engaged at some distance from his dwelling-place in a religious ceremony or penance which precluded his attention to secular affairs and that the prisoner has endeavored to apprehend his brother the Thakoor Benimadhob Singh.

* No. 21, Haroo Bhat.
" 22, Sostee Roy.
" 23, Benund Mal.
" 24, Guddadhur Mal.
" 25, Noyan Behara.
" 26, Kalichurn Chuckerbutty.
" 36, Dwarkanath Manjee.
" 37, Jadoo Gohojoo.
" 38, Gokool Roy.
" 39, Chyetun Bheetria.
" 40, Aukloo Chakladar.
" 41, Gooroochurn Khowas.
" 42, Bissnath Singh.
" 43, Soobul Bheotria.
" 44, Aunund Bheotria.
" 45, Bhurrut Naupit.
" 46, Gour Poddar.
" 47, Kamal Meeah.
" 48, Rajah Asman Sing.
" 50, Rajah Digumber Singh.
" 51, Rajah Juggurnath Singh.
" 52, Rajah Reedoynath Singh.

The jury,† whose names are entered below, find the prisoner not guilty.

On consideration of the evidence I dissent from this verdict, I find that the prisoner is guilty.

First as accessary to murder before the fact, because on the very day that the deceased and others were, to the prisoner's knowledge, taken up and tortured, the prisoner falsely reported that no enquiry was being made; and because the prisoner having witnessed the torture inflicted on the deceased did not, as he, being a police officer, was bound to do, prevent and hinder the same, but on the contrary consented thereto and at the desire of the persons who were actively engaged therein, he went out of the way that he might not interrupt them.

Secondly, as accessary to murder after the fact, because knowing that the deceased Sadhoochurn Tantee had been tortured, the prisoner falsely reported that no one had been tortured, and because the prisoner endeavored to hinder complaint of the fact being made to the principal assistant commissioner. An exception may, however, be raised against this conclusion, the effort to restrain complaint having been made when Sadhoochurn was moribund, not dead.

As to the plea of prior conviction for this offence, there was no such conviction. The prisoner was merely amerced by the principal assistant commissioner for misfeasance as a police officer.

† Hurrischunder Singh, Hikeem Jonardun Sircar, Mookhtar, Nemychurn Singh, Mookhtar.

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The plea of *alibi* fails, because the term of the alleged penance had escaped before the apprehension of the deceased.

I am unable, after much reflection, to discover any mitigating circumstances in this case. From first to last, it was clearly the intention of the prisoner to blind and deceive the principal assistant commissioner. The prisoner does not attempt to refute but would now evade this inference by saying, that he signed the reports prepared by his subordinate officer whom he trusted. It was the duty and it was within the power of the prisoner to have prevented the torture which he knew was being inflicted on the deceased, but he did not. I hold the prisoner to be not less guilty than were his menial followers, who have already been convicted and sentenced to transportation for life. It is therefore my duty to recommend that a similar sentence be passed on the prisoner.

Remarks by the Nizamut Adawlut.—Present: Messrs. E. A. Samuells and D. I. Money.) The prisoner is charged with being accessary before and after the fact to the murder of Sadhoochurn Tantee, and with aiding and abetting the escape of his brother, who was one of his principals in that murder.

It is not satisfactorily proved, as the deputy commissioner himself remarks, that the prisoner did aid the escape of his brother, Benimadhub Singh; and the other acts of the prisoner, which are adduced to prove accessaryship after the fact, were all committed, we find, before the death of Shadhoochurn, and consequently before any murder had occurred to which he could be accessary. We therefore acquit him of this charge.

With regard to the first charge of accessaryship before the fact, the prisoner pleads generally *not guilty*, and adds a special plea to the effect that he has already been tried and punished for this very offence.

This latter plea is not established. The prisoner was chief of one of the petty tributary estates included in the Chota Nagpore commissionership; and, as is customary in that part of the country, was also head of the police within his estates. In 1854, shortly after the occurrence of Sadhoochurn's murder, he was summoned before the assistant commissioner to answer for gross dereliction of his police duties, in concealing the outrages which had been perpetrated upon Sadhoochurn and others, submitting false statements to the authorities, and failing to apprehend his brother, Benimadhub Singh, who was the principal party concerned in the murder. On his arrival, the assistant charged him, it seems, with being accessary to the murder of Sadhoochurn, and he certainly pleaded to that charge; but the assistant appears to have passed no orders on this part of the case, (he indeed had no authority to pass any final orders,) and ultimately convicted him of dereliction of duty as a police officer, and sentenced him to a fine of 200 Rs. recommending at

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the same time, that he should be deprived of his police jurisdiction which has, we observe, been done. There is no doubt that the conduct of the assistant commissioner, in putting the prisoner on his trial, as an accessary to the murder, and then, without disposing of that charge, treating the facts disclosed as constituting a police offence, and punishing the prisoner for that, was highly irregular; but it can in no way affect the present case against the prisoner, who is now, for the first time, tried before a court of competent jurisdiction for the crime which is charged against him.

The prisoner's defence on the merits of the case is, that during the three days on which the torture of Sadoochurn and his companions went on, within the Rajah's fort, he was, by the advice of the Brahmins, performing penance for the loss of his family-idol under a *Madhabee* tree, about two arrow-flights from the entrenchment, and that he had no knowledge of what was going on within the fort. He has adduced a number of witnesses in support of this story; and the jury have credited their evidence and acquitted the prisoner. The deputy commissioner, however, considers the plea to be futile, because the penance is stated to have been performed either on the 27th or 28th and two following dates of April; whereas the Rajah's own reports to the magistrate, shew that the prisoners were not apprehended until the 30th April or 1st May. It is true, that according to the Rajah's own reports, the apprehension of the prisoner did not take place until the 30th April or 1st May; but there is no doubt that these reports stated what was not the fact. The evidence of the witnesses shows clearly that Sadhoochurn and the other men, accused of the theft of the idols, were apprehended immediately after the theft, which occurred on the night of the 27th. Their apprehension took place apparently on the morning of the 28th. The very fact, however, of the Rajah having thought it necessary so soon as the 1st of May, when his first report was written, to conceal from the magistrate the actual date on which the parties suspected of the theft had been apprehended, goes far to negative his assertion that he was ignorant of his brother's proceedings; and apart from the improbabilities of their statements, which, in our opinion, are very considerable, his witnesses have rendered it impossible for us to place any confidence on their testimony, by denying all knowledge of the scenes of torture, which were going on within the fort: for these men are the servants and dependents of the Rajah; they do not pretend that *they* were undergoing penance, and they must have been constantly passing to and fro in their master's service through the fort, where these tortures were being openly inflicted. They cannot, therefore, but have been cognizant of them.

The evidence for the prosecution on the other hand bears the

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impress of truth. There has obviously been no concert whatever between the witnesses. Each tells his story in his own manner, and from his own point of view; and the discrepancies which have been pointed out between their evidence on this occasion, and on the trial of the principals before the magistrate and sessions judge, on a former occasion, are very trifling, and no more than we should expect in two depositions given at such long intervals, and on trials where different parties were at the bar, and the witnesses' attention was therefore principally directed to a different set of facts. We entirely discredit the *alibi* set up by the prisoner, and we place full reliance on the testimony of the witnesses for the prosecution. It remains therefore to be seen how far that evidence bears out the charge, against the prisoner, of being an accessary before the fact to the murder of Sadhoochurn Tantee.

An accessary before the fact is, he, who being absent when the crime is committed, either directly instigates, or conspires with another to commit it, or indirectly evinces by his acts, his assent to, or approbation of the crime which another designs to commit. The fact that none of the parties, who were concerned in the outrage on Sadhoochurn, intended to murder him is quite immaterial; for the purpose which they combined to effect was a highly criminal one, and they and those who were accessary to their proceedings must be held responsible for all the consequences which ensued. It is not disputed that Sadhoochurn died from the effects of torture inflicted upon him by the brother and servants of the deceased. Several of these men have, indeed, been convicted of the murder of the deceased, and sentenced by this court to imprisonment for life. It does not appear, however, from the evidence in this case, that the prisoner commanded or counselled the infliction of the frightful tortures, to which the deceased was subjected, nor would it seem that he approved of it. Those witnesses, who had themselves been tortured, depose that upon seeing them tied up and undergoing torture from bamboo wedges driven between their fingers, the prisoner ordered the strings, which bound their hands, to be unfastened and gave them water, remonstrating at the same time with the wretches who were torturing them, and exclaiming that they (the witnesses) would die.

It is plain, however, that it was to the degree and kind of torture inflicted, that the prisoner objected, and not to the coercion used to compel the deceased and his companions to confess. There was no evidence of any kind against these persons; and it was the prisoner's duty, therefore, when he saw them on the day of their arrest, to have released them on bail; or failing that, to have sent them to the thannah, which was the proper place for their detention. It was also especially his duty, as head officer of police, to guard against any repetition of the cruelties

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which he was aware his servants had already practised upon these unfortunate men. Instead of this, however, it is in evidence that he refused to release the accused, until they should deliver up the idol which had been stolen; that although he unfastened the ligatures, which confined their fingers he retained the ropes, which fettered their feet; and that he allowed himself to be persuaded by his brother and his dewans to retire into his house on the avowed ground, that they could do nothing while he remained. It is clear, we think that he retired into his house with the full knowledge, that coercion of some kind was again to be employed, and in order that his people might not be restrained by his presence. His dwelling-house was not more, it seems, than fifteen or twenty cubits from the spot where the torture was inflicted; and during the two succeeding days the cries and groans of the unfortunate men, who were being maltreated outside, could not but have reached his ears, and made him aware of what was going forward. When it is considered, that the prisoner as head of the police, and Rajah of Jhalda, had full authority, and no doubt, great influence, over the perpetrators of the atrocious crime, which was being committed, his conduct, it is evident, cannot be construed to imply mere inconsequential acquiescence. It must be taken to show consent of a highly criminal character such as is amply sufficient to prove the charge of accessaryship before the fact.

We do not, however, consider that the prisoner is equally guilty with the actual perpetrators of the murder. It is clear, we think, from the evidence of his conduct on this occasion, that he is a weak man of irresolute character, accustomed as too many of these jungle chiefs are, to submit himself to the guidance of the more violent spirits around him; but not himself disposed to acts of cruelty. We are of opinion that a much more lenient sentence than that proposed by the sessions judge will be sufficient as an example, and will be a more correct measure of the prisoner's guilt.

In concurrence with the deputy commissioner, therefore, we convict the prisoner of being an accessary before the fact to the murder of Sadhoochurn Tantee; and sentence him to ten years' imprisonment with labor in banishment from his district.

We observe that as the facts of this case raised a primâ facie doubt whether the prisoner was not an accomplice in the murder instead of an accessary, the commitment should, in accordance with the Circular Order No. 54, of the 16th July, 1830, have been for murder; which would have left it open to the superior courts to decide whether the prisoner's participation in the crime was that of a principal, an accomplice, or an accessary. It is very inexpedient that the magistrates should take upon themselves the determination of these points. The deputy commissioner will be good enough to call the attention of the assistant commissioner to the Circular we have mentioned.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT AND BALOOKRAM SINGH

versus

MUNJEEA MANJEE.

Bhaugulpore.

1856.

November 3.

Case of

MUNJEEA MANJEE.

A Sonthal, convicted of murder, under the circumstances transported for life.

CRIME CHARGED.—Murder.

Committing Officer.—Mr. R. E. Ronald, assistant commissioner of the Sonthal Pergunnahs, Deogurh.

Tried before Mr. G. U. Yule, commissioner of the Sonthal Pergunnahs, on the 17th October, 1856.

Remarks by the commissioner.—The deceased and others, having gone to ascertain where a body of Sonthals was supposed to be collected in order to give notice to the military, entered prisoner's village; he and the other villagers, thinking troops were coming, ran away; but, on finding the strangers were only "Brahmuns" they returned and the Bengallees then fled, and, the prisoner overtaking one of them, Sooful Singh, the deceased in the Adjye river, killed him on the spot with a sword, in the presence of several witnesses; and the body with the head nearly severed from it was found next day. The prisoner confesses the deed; he says the Bengallees came armed to kill the Sonthals, so he killed the deceased; but the Bengallees had evidently no intention of attacking the Sonthals, and even if they had, it would be no justification of the prisoner's deed. The assistant commissioner urges in mitigation of punishment that the deceased and his friends had plundered a potter's house in prisoner's village, and that prisoner and his co-villagers were irritated at having to leave their homes on deceased's approach.

The first point is not at all proved, one witness only deposed to it before the assistant commissioner and the villagers themselves, whose evidence was taken by the deputy commissioner, deny that any plundering took place. As to the irritation, at being obliged to fly, no remark is necessary. The prisoner murdered the deceased, in my opinion, without provocation in cold blood. I agree with the deputy commissioner that a capital sentence is required and refer the case according to the provisions of Act XXXVII. of 1855 for the confirmation of the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs H. T. Raikes and D. I. Money.) It appears from the evidence on record, and the confession of the prisoner himself, that the deceased formed one of a party of *armed* Bengallees about forty in number who entered the village in which the prisoner resided

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with some other Sonthals, all of whom fled away believing the intruders to be sepoys who were known to be in the neighbourhood. Having, however, found out their mistake they returned to the village and the Bengallees, then, probably ignorant of their number, retreated from the place, pursued by the Sonthals; and the prisoner, having overtaken the deceased, cut him down and killed him.

Of course such an act, under the circumstances above stated, can neither be justified nor defended, but taking into consideration that the entrance of the deceased's party, *armed* into the village, must have appeared to the Sonthals to be an unprovoked aggression which they felt themselves justified in resisting, and that this ground of provocation preceded the attack, which was apparently quite unpremeditated, we are of opinion that a sentence of transportation may be passed in lieu of the capital sentence proposed by the commissioner and we sentence the prisoner accordingly.

PRESENT:

H. T. RAIKES, ESQ., *Judge*, AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND THAKOOR ROY, PROSECUTORS,

versus

ZALIM SINGH.

Shahabad.

1856. November 3. Case of ZALIM SINGH.

Under the circumstances Court concurred with the sessions judge, against the *futwa* of the law officer, in releasing prisoner, whose identity was doubtful.

CRIME CHARGED.—Being an accomplice in the riot attended with the culpable homicide of Bhokee Roy, father of Thakoor Roy, prosecutor.

Committing Officer.—Mr. W. J. Costley, deputy magistrate of Saseeram.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 29th of September, 1856.

Remarks by the officiating sessions judge.—The following report of the circumstances connected with this case is given in the sessions judge's abstract statements for the month of August, 1848, and November, 1851.

"It appears that about 8 A. M. of Monday the 12th June, several peadahs on the collector's establishment, together with a few more on the part of Baboo Koursing, had gone to the village of Hutnee to apprehend a number of revenue defaulters, when the whole village seems to have turned out *en masse* to resist the execution of the writ; the deceased who was one of the peadahs and father of the prosecutor made himself rather conspicuous for his activity in endeavouring to serve the pro-

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cess, which act of zeal on his part was met by a severe blow on the head from a *lobunda*, dealt by the hand of the prisoner Bahadoor Dosadh, which fractured the skull of Bhukee Roy, and he died at about 4 P. M. of the same day in the Saseeram cutcherry from the effects of the blow: five individuals appear as eye-witnesses to the fact, who depose to the above circumstances."

On the 15th September, 1848, Bahadoor Dosadh was sentenced to five years' imprisonment with labor and irons and Dheeruss Singh and Pylad Singh to one year's imprisonment and a fine of 200 Rupees each or one year more.

On the 26th November, 1851, Juddoo Singh was sentenced to four years' imprisonment and to pay a fine of 200 Rupees or in default of payment to labor.

On the 1st of last July, this prisoner was apprehended and of the five eye-witnesses, four have been sent in, the other one having died; of these four No. 1 and No. 4 declare that prisoner is not the person called Zalim Singh, whom they mentioned as having seen in the riot, and that his name is Jeet Roy, whilst No. 2 and No. 3 swear that he is the real Zalim Singh whom they in their former evidence accused as being one of those concerned in the affair.

In support of the prosecution, there is the evidence of No. 5, No. 7, No. 10, No. 11, No. 12, No. 13 and No. 14, who all state that the prisoner is Zalim Singh; No. 5 declares that he saw him running away after the riot had taken place, but this man was never brought forward as a witness in this case on the two previous occasions when it was tried. No. 6 had not appeared and Nos. 8 and No. 9 must have been sent in by mistake, as in their evidence before the deputy magistrate as well as before this court they state that they know nothing about this man; there is also the evidence of Mahabil Roy by whom he was apprehended and whom I sent for.

The prisoner declares that he was never concerned in the riot and that his name is Jeet Roy, and that between him and the prosecutor, witness No. 3, Mahabil Roy (by whom he was apprehended) and Rugonath Roy, there is a dispute in consequence of their forcibly cultivating a field of his, to which he objected; he states that he lives in mouza Hutnee and that he and the prosecutor and Mahabil Roy and others have their cultivation in the same locality.

His defence is supported by the seven witnesses who have appeared, viz. Nos. 15, 16, 17, 18, 19, 20 and 25, five of whom are inhabitants of Hutnee, they all declare his name to be Jeet Roy and that they have constantly seen him for the last four years.

In consequence of the non-arrival of one of the eye-witnesses, viz. No. 2, and being unwilling to detain all the witnesses for

1856. November 3. Case of Zalim Singh.

the defence who had been several days in attendance, I took the prisoner's answer and the evidence of his witnesses and postponed the case until the arrival of the absent witness, and after taking the evidence of the latter and in conformity with the Court's ruling (Vol. 2, page 481, N. A. Reports) called upon the prisoner for a further defence, but he had nothing more to add.

The *futwa* of the law officer convicts him of the crime with which he is charged, but the evidence, in my opinion, is not sufficient for conviction.

Of the four witnesses now alive, who stated that Zalim Singh was concerned in the riot, only two swear that this is the man, the other two (one of whom No. 4, was struck twice by Zalim Singh,) declare that he is not so, the prosecutor and witnesses Nos. 5, 7, 12 and 14, who all swear to his being Zalim Singh, live within a short distance of where the prisoner resides and their evidence shows that for some years past they have several times seen him; if he had really been engaged in the riot and was the person for whose apprehension warrants and *ishtihars* had been issued, it is strange that he should have never been seized before. I look upon this circumstance as very suspicious, and considering the evidence of the eye-witnesses for and against him is equal, I think he is entitled to the benefit of the doubt which certainly exists, and consequently would acquit him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and D. I. Money.) We quite concur with the sessions judge that a conviction in this case is impossible; the discrepancy in the evidence for the prosecution, on so material a point as the identity of the prisoner, when there is nothing to lead to a suspicion of the honesty of the witnesses, who depose to the prisoner being Jeet Roy and not Zalim Singh, is sufficient to raise a reasonable doubt in his favor, and we therefore direct his release.

The *futwa* of the law officer gives none but general grounds for the opinion entertained by him, that the prisoner is the real Zalim Singh, who was concerned in the affray.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT AND RAMCHUNDER NOWEER

versus

MEWA BUNEEA (No. 4,) AND CHUMAYLEEA BUNEEAEEN (No. 5.)

Behar.
1856.
November 4.

Case of MEWA BUNEEA and another.

Appeal rejected.

CRIME CHARGED.—1st count, No. 4, burglary and theft of cash amounting to Co.'s Rs. 1,300; 2nd count, Nos. 4 and 5, having in their possession part of the above stolen cash amounting to Rs. 1,144-4, well knowing it to be such.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th July, 1856.

Remarks by the sessions judge.—A burglary by cutting the roof was committed in the prosecutor's house during his absence, on 25th May last, and cash to the amount of Rs. 1,300, carried off. It was not until the house was opened on the 27th idem, that the robbery was discovered. Suspicion at once fell on the prisoner, who lived close by, from his frequenting the premises, which he was not in the habit of doing during the prosecutor's presence. On complaint to the police, prisoner's house was duly searched, when Rs. 458-12, being found concealed in the upper part of the house in three different places, the prisoner was detained and pressed to explain what had become of the rest of the stolen money, at last he told his mother, the prisoner Chumayleea, to bring out the money he had given her, which she thereon did from the inside of the house, to the amount of Rs. 685-8.

Wt. No. 1, Choonnee Nooniar.
" " 4, Chedee Nooniar.
" " 5, Kashee Gurayreea.
" " 6, Manoogee Gurayreea.

Before the police, the prisoner confessed to having committed the burglary in company with two others, against whom, however, no proof of guilt was forthcoming, and scratches being observed in his person, he acknowledged having fallen, whilst effecting the burglary. Before the officiating magistrate, he revoked his confession, pretending that he had made it through sickness and fright. His aunt, Padmunnee, had given him Rs. 1200, which he had hid in several places to conceal it from his mother. As the pretending owner of so much money,

Wt. No. 1, Choonnee Nooniar.
" " 2, Ramrooch Koormee.
" " 3, Juggoo Teylee.

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he set up a most frivolous inconsistent defence before this court. That he had owed the prosecutor 2 rupees the last two years, of which only 8 annas was unpaid, and for which, the prosecutor had threatened to bring him into trouble. Chumayleea has always acknowledged having given up the money, stating before the officiating magistrate, somewhat at variance to Mewa's concealment of it from her, that it was Padmunnee's gift. The prisoners cited witnesses before the officiating magistrate, and fresh ones before this court, not one of whom, however, knew any thing in their favour.

Mirza Imdad Ally of Gya, zillah Behar.
Dial Singh of Sindowree do. do.
Mahommed Bux of Husooree, zillah Moonghyr.
Bhim Sein Missir of Authee, zillah Behar.

The jury unanimously convict Mewa, prisoner No. 4, on the 1st count, and acquit Chumeyleea prisoner No. 5.

I consider Mewa's confession before the police to be quite reliable. It appears from the prisoners' own witnesses that the prisoners are in very needy circumstances, and their possession of so much money otherwise than by theft, is, under all the circumstances of the case, altogether unaccountable, as indeed, as already shewn, stands further confirmed by their own weak and inconsistent defences. I concur in the verdict against Mewa, prisoner No. 4, but differ as to Chumeyleea prisoner No. 5's acquittal. She was present and cognizant of the charges made against her son and the finding of the money in the three first instances. It was not until after considerable delay, when he was in custody, and on his directions that she delivered up the rupees 685-8-0, she herself acknowledged before this court that they had not possessed so much money the last twenty years, and as I can only regard Padmunnee's pretended gift first urged before the officiating magistrate as a false pretence, I convict her, on strong presumption, on the second count, of the guilty possession of the stolen money, well knowing it to be such. The two prisoners have been accordingly sentenced as below.

Sentence passed by the lower court.—No. 4, to be imprisoned for seven years with labor and irons in banishment and No. 5, for three years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) I see no reason to interfere with the sentence of the sessions judge. The prisoners have been convicted of the charges brought against them on sufficient and satisfactory evidence.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT AND SOHUN LALL

versus

CHINTAMUN BURHOEI.

Behar.

1856.

November 4.

Case of CHINTAMUN BURHOEI.

Appeal rejected.

CRIME CHARGED.—1st count, theft of gold ornaments belonging to the prosecutor to the amount of rupees 820-0-0; 2nd count, having in his possession a pair of *burhurras* and a lump of gold, valued at Rs. 154, a portion of the stolen property and Rs. 121, the proceeds of the sale of remaining portion; in all, articles and cash, amounting to Rs. 275, well knowing it to have been acquired by theft.

CRIME ESTABLISHED.—Theft of gold ornaments belonging to the prosecutor to the amount of Rs. 820.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Nowada, with magistrate's powers.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 17th June, 1856.

Remarks by the sessions judge.—As some protection against burglars, the residents of the town of Behar are in the habit of casing or pannelling the inside of any particular room with wood-work. The prisoner had been employed by the prosecutor for this purpose, and, on completing the work, had been discharged. Some eight days afterwards, prosecutor had occasion to look for some valuable jewels he had kept hid in a vessel concealed in the wall of this room. On opening the place he found that part of the frame-work of casing or pannelling had been driven into the place, by which, he traced the vessel broken and all the jewels stolen. He thereon at once suspected the prisoner, went direct to him accompanied by the within witnesses, and in their presence charged him with the theft. After a while he confessed having taken a pair of *kunguns* and a pair of *burhurras*, and gave up the latter with a mass of gold, portion of the former melted down; and Rs. 121, the price of the remaining portion, which he had sold. He was forthwith made over to the police, before whom he made full confession.

Wt. No. 3, Koonar Roy.
" " 4, Deopershad.
" " 5, Doongur Roy.

Wt. No. 1, Motee Mohowree.
" " 2, Goopee Burnowar.

The prisoner revoked his confession both before the deputy magistrate and this court. He acknowledged having worked for the prisoner, as stated. The prosecutor had got up the case against him to deprive him of his hire, still totally unpaid. The jewel was forced on him and

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the cash was plundered out of his own box. He cited two witnesses, who knew nothing in his favour.

Sheikh Hidayut Ally of Mokundpoor, Behar.
Sheikh Soojayet Ally Aftawba, Behar.
Punnoolal of Futtepoor, Behar.
Ruggoonath Suhae Turcoopa, Behar.

The jury unanimously acquit the prisoner on the first count, but convict him on the second.

The prosecution has been truthfully told by respectable people and is confirmed by the very weak and lame defence. The prisoner's own explanation as to his possession of, and keeping so much money as Rs. 121, in a box, is in itself incredible and his own witnesses know nothing about it. Even according to his own exaggerated calculation of his hire due, duly paid at the time according to the prosecution, it only amounted to Rs. 2, which, of itself alone, as pretended, could never have formed any motive for a false prosecution by persons even in a less respectable position than the prosecutors. Differing so far from the verdict of the jury, on strong presumption, I convict the prisoner on the 1st count, and have sentenced him by way of example as follows.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The sentence passed by the sessions judge is affirmed. The prisoner is convicted, on strong presumption, on the 1st count and there is nothing adduced in the appeal, as there was nothing in the defence, to shake the credibility of the evidence against him.

PRESENT:

H. T. RAIKES, Esq., *Judge*, AND D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

MOKEE NUSHY.

Rungpore.

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Case of MOKEE NUSHY.

Prisoner, guilty of murder, sentenced capitally.

CRIME CHARGED.—Wilful murder of his wife, Moree Aorut.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bograh.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 30th September, 1856.

Remarks by the sessions judge.—The prisoner and deceased, it would appear from the evidence, had been married for about two or three years, but the marriage had never been consummated. The age of deceased is variously stated at from 11 to 14 years. The medical officer judged her to be about 14, but thought she might be younger. The prisoner was anxious to consummate the marriage, and his wife's constant refusals, he asserts, caused him to be taunted by his neighbours. Two or three days before the murder, he appears to have left his master's house and come home. On the evening of the 14th September, he asked his wife for some tobacco, which she refused to give him, and on his subsequently seizing her by the arm to take her to his house to sleep with him, she cried out aloud; he therefore let her go and returned to another house, where his father slept. His wife remained in his mother's house and slept with her on the same bed. After brooding for some time over the refusal of his wife to yield to his wishes, and the consequent taunts of his neighbours, he determined to put an end to them by taking her life, and seizing a *kodalee* went with it to the house, where his wife and mother were sleeping and then and there struck his wife as she lay three blows about the head and neck, as he was striking the last blow, his mother, Kajooree Aorut, witness No. 1, awoke and seized him, telling him, that he would be seized the next day. The father also came up subsequently and seeing that life was extinct, ran away and has not since been heard of. The prisoner and his mother went off together leaving the corpse of deceased lying on the mattress, but the next day they agreed it would be better to separate. The following morning, the prisoner's master is stated to have come to enquire for him, and finding the house deserted and the corpse lying as described, gave the alarm. The chowkeedar was sent to the thannah and the darogah went out the same day. All the circumstances pointed to the prisoner as the murderer, and on the afternoon

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of Thursday, the 18th, the prisoner was arrested by Sudderooddeen Burkundaze in the village of Deotore, who took him at once to the darogah, to whom he admitted the crime, and offered to point out the *kodalee* which was found, however, in charge of Kureema Shah, witness No. 9, who had taken charge of the effects left in the deserted house. It still shows marks which may be marks of blood on the blade. The prisoner's confession was at once taken, and he made a full and free confession, and repeated it when brought before the joint-magistrate the next day.

No 1, Kajooree Aurot.

The evidence of the mother, witness No. 1, is conclusive against the prisoner, and might be relied on, even if the confessions were wanting. She was much affected when giving her deposition, and that she could have been actuated by malice to give false evidence against him, as the prisoner now asserts, there is not a shadow of reason to believe.

No 12, Mr. J. Taylor, apothecary in medical charge, Bograh.

The medical officer found two incised wounds on the right side of the head, one on the right side of the neck and one on the right scapular or shoulder. The two incised wounds on the head penetrated through the bones, fracturing the skull, and through both openings, the brain was distinctly visible, either of these wounds, he was of opinion, would have caused death almost immediately, and the *kodalee* in court, he thought, was just such a weapon as would be likely to cause wounds of the nature described.

The prisoner pleads not guilty, asserts that he left his master's house in the morning sick and coming home found his father and mother had fled, and that his wife was lying murdered inside the house. He therefore also ran away. He can give no account of the cause or perpetrators of the murder, but hints at the existence of certain mistresses with a view to avert suspicion from himself. His defence has been made in a very cool and deliberate manner.

* Verdict of the jury Rughoonath Mazoomdar, Haradhunchand, Rumjan Allee.

Opinion and recommendation of the sessions judge.

The jury composed of the native gentlemen named in the margin* found a verdict of guilty; in this finding, I concur and seeing no extenuating circumstances which would justify my urging any mitigation of the extreme penalty of the law, I deem it my duty to recommend capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and D. I. Money.) The prisoner is convicted of wilful murder, upon the clearest and strongest evidence, and, seeing no extenuating circumstances, we sentence him, as recommended by the sessions judge, to suffer death.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. RADHEE

versus

BIJOYRAM DEB (No. 1, APPELLANT,) SHIB DEB ALIAS SHIBRAM DEB (No. 2,) RAMDHUR (No. 3,) HUREERAM DHUR (No. 4,) SHOOKDEB RAMDEB (No. 5,) SHEIKH ALUK (No. 6,) SHEIKH AZMUT (No. 7,) SHEIKH DELAL (No 8,) SHEIKH EDOO (No. 9,) SHEIKH HASHOO (No. 10,) LUKHI CHUNG (No. 11,) SHEIKH BASEER (No. 12,) AND KANOO CHUNG (No. 13.)

Sylhet.

1856.

November 4.

Case of BIJOYRAM DEB and others.

Appeal rejected.

CRIME CHARGED.—Affray attended with the culpable homicide of Madhoo Chung.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 18th June, 1856.

Remarks by the officiating sessions judge.—The particulars of this case are as follows. The deceased and Bijoyram Deb (prisoner No. 1) quarrelled regarding the division of some grain of which Bijoyram Deb (prisoner No. 1) claimed a share, he went to the deceased's house and demanded his portion which the deceased refused to give up, this caused a dispute between the parties which led to an affray, and in which the deceased received a wound, which caused his death.

The prisoner before this court pleaded *not guilty*, but their replies before the police and the magistrate, which were duly attested and verified by the evidence of the subscribing witnesses as well as the prisoners' defence before this court and the evidence of the eye-witnesses in the case, satisfactorily established the offence with which the prisoners are charged, but by whom the fatal blow was given and with what instrument the deceased was struck and his death caused, there is no evidence to show.

The civil surgeon, who held a *post mortem* examination on the deceased, deposed, that he could not positively ascertain whether death was caused by disease or by a blow of a *latthee* or some other weapon, but it is fully proved that the affray arose out of a dispute between the parties regarding the division of some crops, and there can be no doubt as to the fact of the deceased being killed in the affray, I consider the prisoners on the side of the first party to have taken the most active part in the affray and to have been the aggressors, having first offered

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Case of BIJOYRAM DEB and others.

violence. I, therefore, in concurrence with the verdict of the assessors, convict prisoner No. 1, of being the principal in the affray attended with culpable homicide, and the rest of the first party as accessaries, the prisoners on the side of the second party, though less to blame, were also engaged in the affray, I sentence all the prisoners as noted below.

Sentence passed by the lower court.—No. 1, to be imprisoned without irons for four years, and to pay a fine of Rs. 50, Nos. 2 to 9, for three years and a fine of 30 Rs. each, Nos. 10, to 13, for two years and a fine of 25 Rs. each on or before the 28th June, or in default of payment, to labor until the fines be paid or the term of their sentences expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The charge, against the prisoner appellant, is established by the evidence of eye-witnesses and his own confession; and there are no grounds whatever for any interference with the sentence which the sessions judge has passed.

PRESENT:

H. T. RAIKES, ESQ., *Judge* AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

NASI (No. 1,) AND SADARA (No. 2.)

Assam.

1856.

November 4.

Case of NASI and another.

The evidence not being satisfactory, lower court's conviction of culpable homicide, &c. reversed on appeal.

CRIME CHARGED.—No. 1, wilful murder of his wife Musst. Patani and No. 2, complicity in the above crime.

CRIME ESTABLISHED.—Culpable homicide of Musst. Patani and No. 2, abetting in the above crime.

Committing Officer.—Captain Agnew, magistrate of Gowalparah.

Tried before Major H. Vetch, deputy commissioner of Assam, on the 9th August, 1856.

Remarks by the deputy commissioner.—The prisoners both pleaded *not guilty* to the charges which were brought to the notice of the magistrate by the witness Ghamaroo, nephew to the prisoners by marriage, who has deposed that the prisoner Nasi No. 1, quarrelled with the deceased his chief wife who retreated into where he followed her, and shut the door, when the sound of blows as if inflicted by fists and the cries of the woman were heard, shortly she ceased crying and was heard to moan, the house was afterwards entered by the second wife and prisoner's sister-in-law who went and tended on her, that witness from the *verandah* saw Nasi cover the deceased with a cloth, but did not see

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Case of NASI and another.

her move, witness was not allowed to approach, Nasi No. 1, afterwards turned all the people out and shut the door, witness returned to his home and the following day heard the deceased had died of cholera and that her body had been thrown into a *jeel* by her brothers-in-law; heard from Rama (Nasi's nephew) that Nasi had given out that his wife had run off and that he had made search for her, the prisoner No. 1, Nasi and deceased had quarrels, did not interfere at the time, as men beat their wives, believes that deceased died from the effects of the beating.

The jury find the prisoner No. 1, guilty of the culpable homicide of Patani, and No. 2, of aiding and abetting therein.

In this verdict, the magistrate concurred and recommends that No. 1, Nasi be sentenced to three years' imprisonment and to pay a fine of 20 rupees or in default to labor, and Sadara he recommends should be sentenced to three months' imprisonment and to pay a fine of 3 rupees or in default to labor.

It appears to me satisfactorily proved by the evidence that the prisoner No. 1, Nasi, after quarrelling with his wife Patani (who at the time seems to have been a healthy young person and several months gone with the child) followed her into their house and shut the door, and there gave her a severe beating, as may be assumed by the sound of the blows and her cries and moans, while two, out of the four witnesses who heard this, depose that when the door was afterwards opened, they saw the woman lying on the floor and believed her to be in a dying state, after this it is deposed that Nasi went about asking for his wife Patani who, he said, had run away in consequence of having been beaten, whilst it is proved beyond all doubt that her dead body was thrown into *jeel* next forenoon by the relations of her husband. It is deposed to by two witnesses that the prisoner No. 2, Sadara was heard to call out "*mar sali ke.*"

In defence it has been alleged that the deceased died of cholera and that the principal witnesses for the prosecution have ill-will to the prisoner No. 1, Nasi. That there was an ill-feeling to Nasi on the part of the most material witnesses, has, I think, been proved, and cases of cholera had taken place also proved, six witnesses have variously deposed to having seen the deceased ill from cholera before her death.

Nevertheless after carefully considering all the hearings of the evidence, and allowing for the ill-feeling between some of the principal witnesses for the prosecution and the prisoner No. 1, Nasi, and without which feeling it is most probable that the case would never have been brought to light, and what has been deposed by the witnesses on the other side, of the deceased having died from cholera, and which evidence does not appear to me very consistent or satisfactory, I am, of opinion, that the deceased Patani came by her death from an injury or injuries received from the prisoner Nasi, but without any intention on

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November 4.

Case of NASI and another.

his part to take away her life, I therefore convict him, Nasi, of culpable homicide and under the circumstance of the woman being with child at the time he assaulted her, concur in the sentence recommended by the magistrate.

Sentence passed by the lower court.—Prisoner No. 1, to three years' imprisonment and to pay a fine of 20 rupees within one month from the date on which the sentence takes effect, or in default of payment to labor until the fine be paid or the term of sentence expire and No. 2, to (2) two months' imprisonment and to pay a fine of 3 rupees within ten days on the date on which sentence takes effect, or to labor until the fine be paid or the term of sentence expires.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and D. I. Money.) The evidence in this case is of a suspicious character and not sufficient for conviction. It is as probable, looking at all the circumstances, that the deceased died of cholera, as that her death was caused by violence at the hands of the prisoner Nasi. Her death, whether from the beating or from cholera, took place, on the 12th June, 1856. The body was taken to be burnt, and a concourse of relatives and neighbours appear to have accompanied it. Some saw it naked, but no one has deposed to the appearance of any mark of violence upon it. Several witnesses declare she died of cholera. It is not till the 2nd July, 1856, that any suspicion is excited of the deceased having met with her death by unlawful means. The first intimation is then given by the witness Ghamarroo to the *serishtadar* of the magistrate's court. We are at a loss to understand why, if he saw and *heard* what he states to have seen and heard, for no one *saw* the beating, and if the other witnesses, who in part support his testimony, were present, they should, being privy to the commission of the crime, have concealed it so long.

It is *proved*, however, that they bore ill-will towards the prisoner Nasi, especially the informant Ghamarroo, and if we believe the evidence of the witnesses,—some of them disinterested—who declare that the deceased died of cholera, the delay would not be irreconcileable with the supposition that it would require some time to invent the story of the beating and get it corroborated.

At any rate, it is more probable, supposing the death of the deceased to have been caused by the beating, and the informant and his witnesses present, that one of them at least would have given earlier information. One witness says that when the door was opened, after the beating, the prisoner Nasi was *patting* his wife which was not a likely act so soon after an angry assault. There appears also a discrepancy regarding the presence of the prisoner Sadara, and it is not explained *how* and *where*, when the prisoner Nasi went after his wife, and shut the

door and beat her, the prisoner Sadara aided and abetted by calling out to him to do so. Under these circumstances, not being satisfied with the evidence for the prosecution, we acquit the prisoners. We direct the immediate release of the prisoner Nasi. The other prisoner Sadara, whose term of sentence the Court observe, expired, on the 9th ultimo, has, it is presumed, been released.

1856. November 4. Case of Nasi and another.

PRESENT:

H. T. RAIKES AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT AND SOHEBDEE SIRCAR

versus

KHEAL MAHOMED SIRCAR.

Rajshahye.

1856. November 5. Kheal Mahomed Sircar.

CRIME CHARGED.—Wilful murder of Joommun Chokra, son of the prosecutor's (Sohebdee Sircar's) brother.

Committing Officer.—Mr. R. Alexander, joint-magistrate of Pubna.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye.

Under the circumstances, prisoner convicted of culpable homicide only, and imprisoned for 14 years.

Remarks by the officiating sessions judge.—The case was tried at the Pubna quarterly sessions held in July last, but as the circumstances of the case suggested a doubt as to the sanity of the prisoner, though the jury appeared to feel no doubt upon the subject, I thought it proper to allow some further delay with a view to a more satisfactory observation and enquiry, on the part of the medical officer.

The case was accordingly postponed until the sessions just concluded, and the prisoner was then again brought up (17th September). The medical report, however, which will be found with the record, negatives any supposition of insanity and declares the prisoner accountable for his actions.

The facts are as follows: the deceased Joommun, a boy about twelve years of age had charge of his uncle's cows which were grazing. On the 16th Jyt last, he and a couple of other boys, about his own age, proposed to get some mangoes from a neighbour's tree. The prisoner *Kheala* was sitting near the tree and on being asked for his knife, refused to lend it, but agreed to prepare the mangoes for their eating; presently, the boys went away leaving the prisoner there, but the deceased recollecting that he had left his rope behind him returned to seek it alone.

The next thing seen of him was by *Khohim Jeabe, witness No.* 5, who had seen the boys eating their mangoes together and *Kheala* with them preparing the mangoes with his knife, and who says that about a *dundo* afterwards, Joommun came

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Case of KHEAL MAHOMED SIRCAR.

towards him holding his hand to his throat, and also with a wound in his stomach, saying I am killed, and that in reply to a question from the witness, Joommun said, *Kheala* (the prisoner) had wounded him; this witness with the help of others attempted to carry Joommun home, but he died on the way.

No. 6, *Safatoollah Sircar* who, like the last witness, had been working near the spot and had seen *Kheala* and the boys together, presently heard an outcry and on going to the spot found Joommun wounded as abovementioned and bleeding.

No. 12, *Buxi Paramanick* saw the prisoner and the boys together from a considerable distance and *about two dundos afterwards* saw *Kheala* running away in a westerly direction, but not near enough to distinguish whether he had any thing in his hand or no.

No. 13. This is corroborated by another witness *Mangun Paramanick*.

The *sooruthal* shows the nature of the injuries; this is the case against the prisoner, and it seems to me to leave no room for doubt as to the act having been committed by him.

The only point upon which hesitation can, I think, arise, is as to the mental condition of the prisoner, whether as directly described by the witnesses, or as inferrible from the absence of any known cause for the fearful crime with which he is charged.

One of the witnesses *Buxi*, speaks of him as "*Kheala Pagul*" the madman, as if he were commonly known by that designation and nearly all of them say that he has been for some years liable to fits of insanity, but on being asked what the symptoms or indications of this insanity consists in, they mention only mutterings and scratchings of his body, they also state that he has no occupation and wanders from place to place.

His appearance, however, gives no indication of neglect of his personal wants, he is apparently about 45 years of age, in good condition, respectable, and quiet in aspect and manner, and his look indicates cunning rather than imbecility or madness.

Again, his demeanour in jail during the last four or five months under the attentive observation of Mr. Ellis, the intelligent sub-assistant surgeon, affords no evidence of derangement, while his flying from the spot and his persistent denial of the charge must be taken as unmistakeable proof of his fear of the consequences of the crime he had committed.

There was no apparent cause for the offence, but we cannot tell what may have happened in the few moments which preceded the acts, whether some childish taunt had exasperated the man, or possibly there had been a dispute about the forgotten rope, or in short any trifling cause may have led to the irritation, or the ungovernable impulse which prompted him to bloodshed.

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I therefore see no reason to depart from the view of the jury, at the same time I have been so far influenced by a possibility of some weakness in the prisoner's mental constitution, that with considerable doubts and misgivings I have recorded against him a sentence of imprisonment for life in the Alipore jail.

In doing so, I have been actuated by the consideration that if in confinement the prisoner's insanity should become declared, he may be submitted to the treatment requisite in such cases.

I repeat, however, that I am doubtful of the adequacy of this sentence, and if I had it to do again should probably recommend capital punishment, and so I leave the case in the hands of the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The declaration of the deceased, is the only evidence that fixes the crime on the prisoner: but as that declaration was made only a short time before his death, it may be reasonably regarded as a dying declaration and received as such in this case. On this proof, therefore, supported by the circumstantial evidence of the other boys and those witnesses who saw the prisoner in their company within a short time of the deceased's appearing with wounds on his person, we think it may be fairly presumed that deceased met his death by the hand of the prisoner. There is, however, nothing on record to lead to a surmise, even, as to the motive that induced the prisoner to commit this crime. He is evidently a man of weak intellect; and though we doubt not quite capable of judging between right and wrong in a matter of this kind, there is much reason to believe that he would be more susceptible of anger and more readily give way to his passion than one possessed of ordinary faculties and perceptions. Some provocation, however slight, most probably induced him to assault the deceased boy and to make use of the knife which he is said to have had in his hand at the time. The state of the body was such that no correct description of the actual cause of death could be given; and though the boy died apparently of hemorrhage the actual extent and nature of the wounds, as a means of judging of the violence used are not indicated by the record before us. The medical officer states that life might have been saved had assistance been rendered; and it is quite possible that the wound in the neck, like that in the abdomen, may have been caused by a sudden stab of a knife. Had the deceased been held, or any deliberate attempt been made on his life, the attention of some of the witnesses who were near at hand must have been attracted to the circumstance. Looking at the evidence on record and probabilities of the case, we think there are not sufficient grounds for convicting the prisoner of wilful murder; but holding him to be guilty of culpable homicide we sentence him to fourteen years' imprisonment with labor in irons.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, ESQS., *Officiating Judges.*

Backergunge.

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November 8.

Case of ANUND CHUNDER CHOUDREE and others.

The sentence of the sessions judge passed upon prisoners Nos. 14 and 15, who are found guilty of riotous attack attended with the plunder of property and the illegal imprisonment of the prosecutor, confirmed; that, however, passed on prisoner No. 13 is reversed; the name of this party not appearing on the record till after the return of the magistrate from the mofussil, the Court is unable to place confidence in the evidence of the witnesses against him, he is consequently ordered to be released.

The Court observe that a sentence of 3 years with labor commutable to a fine,

GOVERNMENT AND BOYIKUNTH CHUNDER ROY CHOUDREE

versus

ANUND CHUNDER CHOUDREE (No. 13,) MOHUN CHUNDER DASS BHOOEAH (No. 14,) AND ROOPCHAND HALDAR (No. 15.)

CRIME CHARGED.—1st count, riot with violent breach of the peace and plunder of property valued at Rs. 2,908-5-3, belonging to the zemindaree cutcherry and the ryots of the village of Bhoorghatta; 2nd count, assault, oppression and forcibly carrying off Boyikunth Chunder Roy Choudree, zemindar and detaining him in illegal confinement for eight days.

CRIME ESTABLISHED.—1st count, being accomplices in the riotous attack in the cutcherry of the plaintiff and the houses of his ryots in the village of Bhoorghatta accompanied by the plunder of the said cutcherry and houses; 2nd count, assault, carrying off and illegal confinement of the plaintiff.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 25th August, 1856.

Remarks by the sessions judge.—In concurrence with the *futwa* of the law officer, I convict the prisoners of the crime set forth in this statement, and sentence them as shewn in column 12.

It must be admitted that there are some discrepancies in the evidence, and I am of opinion that the quantity and value of the property plundered have probably been exaggerated; but the broad fact that the cutcherry and village of Bhoorghatta were attacked and plundered in open day in the presence of two burkundazes specially deputed to keep the peace, and the plaintiff carried off and kept for several days, in illegal confinement, is fully established.

Sentence passed by the lower court.—Nos. 13, 14 and 15 each to be imprisoned without irons for three years and to pay each a fine, Nos. 13 and 14, of five hundred, and No. 15 of one hundred rupees, on or before the 25th September, 1856, or, in default of payment, to labor until the fines be paid or the term of their sentences expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C. B. Trevor.) On a careful consideration of the

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evidence in this case, we have come to the conclusion arrived at by the sessions judge, viz.: that the cutcherry and village of Bhoorghatta were attacked and plundered in open day, and that the prosecutor was carried off and kept for several days in illegal confinement under the very eyes of the police.

The record shows, undoubtedly, various discrepancies on the evidence; but it also shows that had it not been for the fact of the magistrate having proceeded himself to the spot, the case would have, in all probability, been hushed up through the influence of Meerannissa Khatoon, the wife of the deputy magistrate, Abdool Mujeed.

The evidence against prisoners Nos. 14 and 15 is clear from first to last; their names appear in the deposition of Zeiruddeen who gave information at the thannah on the first April, and in the statement of all the witnesses examined before the magistrate on the 7th April when he was in the mofussil; the name of prisoner No. 13 was mentioned, neither when the case was first reported, nor when the magistrate took the deposition of witnesses on the spot; it appeared, for the first time, in the evidence of witnesses taken before the magistrate at the sudder station on the 19th April.

We see no reason for interfering with the sentence passed against prisoners Nos. 14 and 15. Taking into consideration, however, the length of time that elapsed, ere the name of prisoner No. 13 appeared on the record, we cannot, irrespective of his defence, put confidence on the evidence of the witnesses deposing to his presence at the scene of the riotous attack with plunder; but acquit him of the charge and order his immediate release.

We think the punishment awarded by the sessions judge not at all commensurate with the crime of which the prisoners have been found guilty; and we direct that the sessions judge forward copies of his own remarks and of those of this Court to the commissioner of circuit, in order that that officer may be made aware of the lawless act committed by the dependant of a police and judicial officer, in the very zillah to which that officer stands appointed; and may take whatever notice of the same he may think advisable.

is a punishment altogether incommensurate to the crime of which the prisoner had been found guilty.

The sessions judge is directed to forward copies of his own remarks and those of the Court to the commissioner of circuit, in order that that officer may be made aware of the lawless act committed by the dependant of Abdool Mujeed, a police and judicial officer, in the very zillah to which he stands appointed, and take whatever notice of the same he may think advisable.

PRESENT:
H. T. RAIKES AND J. H. PATTON, ESQS., *Judges*.

TRIAL NO. 2.
GOVERNMENT
versus
JUGGERNATH SINGH (No. 2,) AND WAHED ALLY KHAN (No. 3.)
TRIAL NO. 3.
JUGGERNATH SINGH (No. 2,) AND WAHED ALLY KHAN (No. 3.)

Behar.

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November 12.

Case of JUGGERNATH SINGH. and another.

Appeal rejected in a case of perjury.

CRIME CHARGED.—*Trial No.* 2.—No. 2, perjury in having on the 9th July, 1855, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the deputy collector of zillah Behar, that in the month of *Bysack* the *wasil* (collections) *baqee* (balance) of Ramphul Doobey and Ramtuhul Doobey was made out, 18 biggahs, 15 cottahs *nugdee*, the *jumma* of which is Rs. 91-14, Bhowleeland is 28 biggahs. Danabundee of both *hissas* or shares is 495 maunds. The *hakmee* share of which is 247 maunds, 20 seers, the money of which is Rs. 172 and the total of which amounts to Rs 263-14, deducting Rs. 134-6-6 on account of share of other individuals, leaves a balance of Rs. 129-7-6, payable to plaintiff by the defendant. Out of which, Rs. 4 were realized by *nugdee* collection, Rs. 125-7-6, were due from the above mentioned individuals. On demand no payment was made, consequently this suit has been instituted by the plaintiff. As I am servant of Fuqueeroollah Khan plaintiff, I am acquainted with the circumstances of the case, the balance is due on account of 1262 F. S. The *kast* of the defendant is situated in Mouzah Goomaputtee Kellan, Pergunnah Incha. The rate of *putta* is fixed at 5-8, 4, 3-8. And in having on the 1st December, 1855, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the collector of Behar, that Wahed Ally, karperdaz or agent of Fuqueeroollah told me that so much as his field is you prepare *luggit*. So that agreeably to his request I prepared the *luggit* and affixed my signature to it. Owing to *tabdaree* (allegiance) I signed it. In fact, I am unacquainted with the *kast*, &c. of the defendants only to *tabdaree* or being his servant and to obtain my wages that I wrote the *luggit* and attested it. And in having on the 5th December, 1855, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the collector,

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Case of JUGGERNATH SINGH. and another.

Behar, that in fact I made no *danabundee*, nor did I write the *khusra*. I did not write the *luggit* from my own knowledge, but at the request of Wahed Ally khan, karperdaz or agent of Fuqueeroollah Khan, proprietor, that I prepared the *luggit*. I prepared the *luggit* in the house of Fuqueeroollah Khan. Fuqueeroollah Khan and Wahed Ally Khan live in the same house. Such statements being contradictory to each other on a point material to the issue of the case; No. 3, subornation of perjury of prisoner No. 2, in the aforestated perjury on 9th July, 1855.

Trial No. 3.—No. 2, perjury in having on the 13th July, 1855, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the deputy collector of Behar that in the month of Bysack, *wasil baquee* was made out. Balance of Rs. 60-12 remained as due from Saligram Pandey, Ramoo Pandey and Gugadhur Pandey, they were several times importunately called upon to pay the money, but without success. When the abovementioned persons took away the crops to their homes then becoming hopeless, this case was instituted in summary suit department, nine biggahs, ten cottahs *nugdee* at the pottah rate of 5-8, 4, 3-8 the rent of which amounts to Rs. 46¼ twenty biggahs of Bhowalee land yielding paddy, gram and wheat. Both *hissas* or shares amount to 290 maunds. The *hakmee* share is 145 maunds, the money of which amounts to 100 Rs. The total *jumma* is 146¼ deducting 74-8 on account of 4½ anna share of other individuals, leaves a balance of 71½, on account of 3½ anna share belonging to the plaintiff. Out of which Rs. 11 were recovered, Rs. 60-12 are due from the Assamees. The Nugdee and Bhowalee lands are situated in mouzah Gooma, Puttee Kullan, Pergunnah Incha, the rent is on account of 1262, F. S. I on the part of the plaintiff, our Mutsuddee or mohurir and Nundee Doosadh was Jurreeb Kash (or land surveyor) and Ameen the abovementioned Assamees were for *dana* of Bhowalee land. In the presence of the said assamees *dana* was made. In Ughun *dana khurreef* (or harvest grain) and in the month of Chyte, *dana rubbee* (or spring grain) were made, and in having on the 2nd December, 1855, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the collector of zillah Behar, that I cannot point out the boundaries and extent of the field, because I made no *danabundee*, I am *ticca* or hired servant of a few days. Whenever he had occasion I would write according to his request. An enmity existed between Fuqueeroollah Khan and the Assamees; Fuqueeroollah Khan and Wahed Ally Khan (who were together) told me that I shall bring an action against the Assamees, prepare *luggit*. Consequently I prepared the *luggit*. Such statements being contradictory to each other on a point material to the issue of the case No. 2,* subornation of

* Sic orig.

1856.

November 12.

Case of JUGGERNATH SINGH and another.

perjury of prisoner No. 1,* in the aforestated perjury on 13th July, 1855.

CRIME ESTABLISHED.—*Trials Nos.* 2 *and* 3.—Perjury.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 13th May, 1856.

Remarks by the sessions judge.—Trial No. 2.—Fuqueeroollah proprietor of 3 annas 17d. in Puttee Kullan, mouzah Goorrian sued two cultivators, Ramtuhul and Ramphul for arrears of rent due for 1262 F. S. amounting to Rs. 125-7½, on account of cultivation for biggahs 46-15k. and obtained a decree accordingly in the deputy collector's court which being appealed was reversed, and the prisoners made over to stand their trial before the criminal court by Mr. Collector Hodgson, on the grounds detailed in his decision of 15th January, 1856.

The following facts of the case are briefly stated.

Juggernath, prisoner No. 2, on behalf of his employer, Fuqueeroollah and his uncle, manager, Wahed Ally prisoner No. 3, was the native agent who filed the accounts and deposed to their correctness, under which the deputy collector's decision in Fuqueeroollah's favour took effect, on 2nd December last, Mr. Collector Hodgson held a local enquiry on the spot in the presence of the two prisoners, which resulted in proving that that Ramtuhul and Ramphul's cultivation amounted in all biggahs 5-14 at a rental of Rs. 9-5. Juglal Doss (witness No. 4,) the real Butwaree of the place managing the collections, on the part of Jubboo Bukal, who held an usufructuary mortgage of Fuqueeroollah's share, on which a balance was still due, had collected the rents for 1262 from the two cultivators thus sued. The entire rental of the Puttee Kullan, was only Rs. 165, Fuqueeroollah's proprietary share of which would be only Rs. 35 or thereabouts, so that a plaint on his part for Rs. 125-7½ on account of two cultivators only was obviously false, the suit had been falsely and maliciously instituted to punish and make an example of the ryots for having given evidence in an adversary's favour in an Act IV. suit.

As will be seen by the abstract of the charge in the calendar, Juggernath, on 1st of December last, the day previous to the local enquiry, had deposed before the collector that he was unable to give any particulars of Ramtuhul and Ramphul's cultivation and the accounts thereof which he had previously written filed and sworn to as true, had not been prepared on his own personal knowledge, but on Wahed Ally's instigation. His subsequent one of 5th December, and his defence of 5th January following, before the same functionary are to the like effect.

Questioned by Mr. Collector Hodgson on the spot itself on 2nd December last, Wahed Ally referred to the Putwaree Joylal

* Sic orig.

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Doss as being able to point out the cultivation, the subject of suit, as he could not, vide answer 2, and in reply to the 3rd question shewing that this had been done as required by him, and that it resulted in such a singularly defective quantity he said "whatever account Juggernath had made out he had agreeably thereto instituted the suit. He had never been on the ground before and knew nothing about it or its próduce, and the same was the case with Fuqueeroollah."

Before this court the foregoing facts have been verified by the testimony of the attending *umla*, the mokhtears, the subscribing witnesses and the putwaree Joylal Doss. There was gross equivocation by witness No. 9, immaterial, however, as corrected by the evidences of his fellow-witnesses, and the very record itself he deposed to having witnessed.

Witness No 1, Syud Kazim Ally mohurrir, No. 2, Sheikh Buroollah mokhtear of the collectorate, No. 3, Sheikh Mohummud Ishfag, mokhtear of the collectorate, No. 4, Joylal Doss, No. 5, Sheikh Talib Ally, No. 6, Rugghoonath Suhoy, mohurir, No. 7, Bhojraj Singh, nazir of the collectorate, No. 8, Nund Beharcelal, No. 9, Khooblal, No. 21, Doorgapershad.

Before this court Juggernath pleading "*not guilty*" entered into a lengthy inconsistent defence. He revoked his statements before the collector, on the plea of their having been made during sickness and duress by the peons, to which effect he produced witnesses, but whose testimony is palpably tutored for the occasion, and is opposed to the statements themselves duly countersigned by the prisoner, on each occasion, the nature of the interrogatories and their answers, the circumstances which elicited them at the time and the manner in which they have been verified. He challenged the measurement which although so conclusively against him he had never questioned before. The case should not have been disposed of, without the Putwaree's attendance, whereas in reality, Joylal's evidence has been consistent, direct and positive in support of all the circumstances maintaining the present prosecution, whether as before the deputy collector during the summary suit in the first instance, then before the collector including the measurements on the spot, or lastly as an unwilling witness before this court. He now again upheld his original accounts, and deposition under which the deputy collector gave his decree, and yet inconsistently charged Fuqueeroollah as the originator, and as Fuqueeroollah had been punished by a fine of Rs. 200 the matter had been disposed of, and it was unjust to pursue him, the prisoner, about it.

Before this court, Wahed Ally at direct variance to all his previous conduct and statements, so fully recorded, adopted the same line of defence as that set up by Juggernath with the addition of wildly attributing a frivolous spite to the witness

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Joylal Doss, which, under the circumstances of the case, was simply absurd. The gist of his previous statements had been, to exculpate himself, by throwing the blame on Juggernath. He, Wahed Ally, was an illiterate person who could neither read or write, though signing his name pretty well in the Persian character to every one of the statements made by him. He filed the accounts in the summary suit on Juggernath's telling. He merely cited witnesses to character.

Of the jury as within, the three first convict both prisoners on the count charged, the fourth Iltaf Hussein dissenting acquits them.

Moonshee Munoruthlol, Vakeel P. S. ameen's court, M. Luchmun S hay, Vakeel P. S. ameen's court, Syad Wyhur Hussein of Bisharunpoor, Behar, Sheikh Iltaf Hussein of Mukdoompoor, Burrownha, Behar.

The facts of the case are too positive to admit of any doubt of a false suit for arrears of rent having been instituted and carried through by the two prisoners by means of accounts grossly fabricated and prepared, and their truth sworn to by Juggern th, and a decree thereby obtained in the first instance in the deputy collector's court. These proceedings had been carried through with such extravagantly audacious daring in the first instance, that when the discovery energetically opened up, the prisoners had nothing left for it, than to criminate each other. Their subsequent recantation thereof before this court resolves itself simply into a suicidal recognition of the crimé, which convict them when they again recognise accounts and depositions of whose falsity there is such abundant proof. Any further comment on Juggernath's guilt must be superfluous. I convict him as the native agent or accountant under Section xxx. Regulation XII. of 1817 on the count charged.

But the question of Wahed Ally's guilt is of a somewhat more intricate kind. The power of attorney under which the suit was instituted was duly signed and delivered by Fuqueeroollah and specified the false and fraudulent amount in full sued for, but beyond this it is not in proof that Fuqueeroollah took any further active part in the suit or the proceedings which closed it in his favor. The magistrate took no measures against Fuqueeroollah, the collector having fined him 200 Rs. citing Regulation III. of 1793, Section xii. and Clause 5, Section xv. Regulation VII. of 1799 for knowingly instituting a groundless, vexatious and malicious suit. This cannot benefit the prisoners, as each would wish to make out. Their acts and responsibilities being personal and direct, for which each alone is separately responsible are not affected by those of another not before this court. The false accounts and their supporting perjury were avowedly for Fuqueeroollah and Wahed Ally's benefit and at their instigation, Juggernath was their mere mercenary tool. Wahed Ally's active agency therein was direct and continuous.

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Although beyond filing the accounts, neither of the two, viz. Fuqueeroollah and Wahed Ally appear to have taken any further personal exertions in the progress of the suit, yet it is in evidence, and acknowledged by Wahed Ally, that he was present when those accounts were filed, as well as also according to the witnesses that he was so also afterwards prior to the decree being given in their favor. The *mokhtear* Buroollah, witness No. 2, informed both Juggernath and Wahed Ally that their suit had been opposed with direct denial of the extent of land-rent sued for, when both persevered in declaring their claim to be true and correct. Primâ facie it is impossible that any principals thus acting in person, however illiterate, which in the present instance of Wahed Ally is very doubtful, could have filed such a suit and watched its progress to a favorable decree, without being fully cognizant of the fraud which, under all the circumstances of the case, no one but themselves could have instigated. Indeed, we have Wahed Ally's plain admission of his own guilty knowledge in the matter in all his statements before the collector, I would particularly refer to his following two answers. He had admitted that the gross rental of Fuqueeroollah's share was not more than Rs. 150 or 175, and when asked, 5th December, 1855, how in this and the other suit of Lullitt Ram, the subject of the following trial of a precisely similar fraud, he had managed to sue a few ryots for a rental in excess thereof or Rs. 201-3½. He replied, answer 3rd, "It was Juggernath's doing," and when thereon questioned with the knowledge he thus held of the rental how he could permit such a claim to be instituted," he replied, answer 4th, "I told Juggernath it was false, why had he made it out so," when Juggernath replied: "Let it pass, complain," and I therefore instituted the suit. These admissions and many others of a like inculpating tendency were made after gross exposure of Wahed Ally's duplicity previously on the 2nd idem, during the collector's local enquiry on the spot when he falsely attempted to point out a sufficient quantity of cultivation to satisfy the decree so fraudulently obtained. He had thus not only personally exerted himself to obtain this decree in a false summary action well knowing it to be such at the time, but on the spot itself when that decree was under appeal and investigation, had personally endeavoured to prop it up by persevering in similar fraudulent conduct. Such results materially corroborate Joylal Doss's direct testimony which has always been truthful though before this court unwillingly given. He was first reported absent and the trial was postponed for his attendance. This witness's position as opposed to the proprie-

Vide Joylal's evidences before the collector of 2nd December, 1855 Nos. 15 and 16 questions 3 to 13, of Wahed Ally's evidence before the collector on 1st December, 1855.

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tor's must have been a trying one and nothing could have been easier at the time than for the prisoners to have disproved his testimony and the measurements and the local enquiry which corroborated it had they been untrue. Under this view there can be as little doubt of Wahed Ally's guilt as of Juggernath's; and regarding the latter merely as the mercenary tool in iniquitous transactions for which of the two Wahed Ally must be held the most directly responsible.

Trial No. 3.—This case with the alteration of names and particulars and with one exception is precisely similar to the foregoing trial. The cultivators sued and decreed against in the deputy collector's court originating the present trial were Saligram Pandey, Ramoo Pandey and Jugadhur Pandey for Rs. 60-12 due on a cultivation of biggahs 29-10 for 1262 F. S. The perjury and subornation of perjury took place in a similar manner, as elicited by Mr. Collector Hodgson's investigation when the deputy collector's award was before him in appeal. Both then and in the trial before this court, it was satisfactorily established that the real cultivation of these cultivators for 1262, did not amount to more than 12 biggahs at a total rent of Rs. 12-6 which was solely under the putwaree Joylal's control and management.

The exception is that whilst this case was before the collector in appeal, a confession of judgment was filed by Saligram and Gugadhur, dated 29th October, 1855 and directed to be brought up with the appeal, when on these persons being questioned by the collector on 5th December following, Nos. 9 and 10, they declared that they had been intimidated into presenting it. A fraudulent attempt doubtless to injure the inquiry into so much iniquity then pending. In any case there had been no formal acknowledgment or acceptance of this confession of judgment and as thus disposed of, it cannot even technically affect the present trial in any way as the prisoners would wish to make out, but, if any thing, under all the circumstances of the case rather tends the more to confirm their guilt.

The verdict of the jury and my own finding are necessarily those already given in the former trial in which a consolidated sentence has been already passed.

Sentence passed by the lower court.—No. 2 to a consolidated sentence of imprisonment with labor and irons for five years and No. 3 in banishment for seven years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner, Jugernauth Singh, rests his defence in appeal on the same pleas, as set forth by him in the sessions court. We cannot interfere with the sessions judge's orders based, as they are, against the prisoner on the ground of want of credibility of his witnesses. The presumptions against the prisoner Wahed Ally are just and reasonable

as to the part he took in filing false accounts and suborning the evidence of the other prisoner in support of them. We see no reason to interfere, and reject the appeal.

1856. November 12. Case of JUGGERNATH SINGH and another.

PRESENT:
H. T. RAIKES AND J. H. PATTON ESQS., *Judges*.

GOVERNMENT AND RADHALAL KAITH
versus
BHURUTHLAL (No. 4,) AND GHUMUNDYLAL (No. 5.)

Behar.

1856. November 12. Case of GHUMUNDYLAL and another.

Conviction by lower court in a case of forgery, &c. reversed, no injury having been caused by the alleged act.

CRIME CHARGED.—No. 4, having fraudulently executed and filed a forged security bond dated 19th September, 1855, under the name of Radhalal in which he pledged 10 annas share of Mouza Chundwara, Pergunnah Bhelowur on behalf of Purshun Singh, Rekha Singh and Nundlal Singh; No. 5, causing the abovementioned forged security bond to be filed through Bhuruthlal by fraudulent means.

CRIME ESTABLISHED.—Same as crime charged.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate of Behar.

Trial before Mr. T. Sandys, sessions judge of Behar, on the 10th April, 1856.

Remarks by the sessions judge.—The prisoners were committed by the officiating magistrate. No. 4, or "Bhuruthlal" on the charge of having fraudulently executed and filed a forged security-bond, under the name of Radhalal in which he pledged a 10-annas share of Mouzah Chundwara, Pergunnah Bhelowur and No. 5, with causing the abovementioned forged security bond to be filed through Bhuruthlal by fraudulent means. The prisoners denied their guilt.

The law officer finds them guilty of the acts with which they are charged, and in his finding I agree. The case seems with proof, and may best be described thus.

It appears, that in the month of September last the witnesses Nos. 4, 5 and 6, in the calendar, or Pursun Singh, Rekha Singh and Nundlal Singh were forwarded to the magistrate as having been concerned in a case of riot, and were called upon by him to furnish security for their appearance, pending their trial, to the amount of 200 Rupees each, that for the purpose of obtaining such security they were entrusted to the care of witnesses Nos. 1, and 2 or "Ameer Khan and Gomanylal." Happening to see the prisoner No. 5 "Ghomindylal," who was known to "Pursun Singh," he was asked to become their security. He declined, but he said he would immediately find a person who would, and he shortly thereafter brought the prisoner No. 4, describing him to the witnesses abovenamed, as one "Radhalal" the proprietor of a share in Mouzah Chundwara. The parties

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then proceeded together to "Ramdial Singh's" house, where the bond was duly drawn up, and signed by prisoner No. 4, as Radhalal, and attested by witness No. 3, and one "Heeramun," both of whom, it seems, became witnesses to it, under an assurance from "Ghumundylal" that the transaction was an honest one, and that Radhalal was the owner of property in the village aforenamed to the extent pledged. It may here be added that it is also shown, that as a consideration for the obligation, about to be conferred, twelve rupees were given to "Ghumundylal" on the way to Ramdial Singh's house.

On an enquiry being instituted, as to the value of the security, it quickly came to light that the deed was a forgery, for the only "Radhalal" in the village of Chundwara denied all knowledge of the "transaction," and was shown to be a proprietor to the extent merely of eighteen *dams*. He has deposed in this court also to the same effect. That the deed then is a forgery is undoubted. That it was forged by Bhuruthlal is clear. That was so forged at the instigation of "Ghumundylal" is certain. That it was subsequently issued, and caused to be issued by the prisoners is proved, evidence of a most consistent kind having been brought forward to establish each and every act.

The defence set up, by the defendants, is that they were absent at the time the forgery is said to have been committed, but it is supported by testimony of a most feeble description, and in it there are many contradictions which tend to give it no weight whatever. It may be urged that the forger is deserving of the severer sentence or of a longer term of imprisonment, but in this case the prisoner No. 5, planned and most sedulously caused to be carried out to completion, the forgery, and the issuing of the forged deed, whereby I consider him equally guilty and I have therefore sentenced both prisoners to seven (7) years' imprisonment each, No. 4, to seven years with labor and irons, No. 5, to seven years with labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner Ghumundylal has alone appealed, and his share in the transaction appears to have been confined to getting the bail bond executed by the other prisoner, Bhuruthlal, but since clause 3, Section iv. Regulation II. of 1807, provides that the penalties for forgery stated in Section 3, are meant to include all fraudulent and injurious frabrications, &c. of written deeds or papers, and the present indictment under which he has been convicted neither alleges injury to any one, nor has such fact been found by the judge, the conviction on the charge as drawn up is not sustainable. The prisoner must therefore be acquitted. The sessions judge and magistrate should bear in mind that a forgery must be both fraudulent and injurious, to constitute the offence indictable under the law; and that the conviction should be based upon facts in consonance therewith.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND KISTODHUN MOOKERJEA

versus

PORESH MOOCHEE (No. 1,) RAMDHUN MOOCHEE (No. 2,) DOOLUBH MOOCHEE (No. 3,) AND FUQUEER MOOCHEE (No. 5.)

Beerbhoom.

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Case of PORESH MOOCHEE and others.

The evidence being unsatisfactory, prisoners were released on appeal.

CRIME CHARGED.—1st count, dacoity committed in the house of Kistodhun Mookerjea, plaintiff, from whence property valued at Rupees 366-5 was plundered; 2d count, receiving stolen property knowing the same to have been obtained by committing the abovementioned dacoity.

CRIME ESTABLISHED.—Prisoner No. 1, convicted of dacoity, and prisoners Nos. 2, 3 and 5, convicted of the 2d count.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 13th September, 1856.

Remarks by the sessions judge.—On the 8th July, 1856, the prosecutor was awakened by the entry of some twenty dacoits, who struck him, prevented his crying out, and induced him by threats to shew where his property was; they also made the plaintiff's wife and children strip off and give up their ornaments, and then after rifling the house discovering even the concealed money of the plaintiff, they departed as they came. Plaintiff stating that he recognized one man named Edoo Sheikh, but that he could not identify any of the others though the prisoners were known to him, as they were disguised by having their faces blackened and from clothes tied lightly about them, property to the amount of upwards of 360 Rupees was taken off.

The fact of the dacoity having taken place is proved in the usual manner, there were some slight discrepancies in the plaintiff's statement, but not of consequence.

The darogah came to make his enquiries the next day, suspicion fell on the servant of the plaintiff (prisoner No. 1,) as plaintiff explained that he was the only person besides himself that knew where his money was concealed, it will be observed that this man was not apprehended till the 11th, though the police came to the place on the 9th, this is accounted for by the man having been absent on a message to some of his master's relations. On being apprehended he confessed to complicity in the dacoity and gave up two golden *madoolees* worth about 3 Rupees, which had been hidden under a tree, near a tank, he mentioned the name of the present prisoners and others, who

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were acquitted by the magistrate. This confession he repeated in a very circumstantial manner before the magistrate.

At the sessions he denied, stating that the mofussil confessions had been partly extorted and partly written for him and that what was written before the magistrate, he did not know stating that the *madoolees* were put into his hand by the police.

He seems to have personally borne a good character but his evidence, his own relations, can say but little in his favor.

Prisoner No. 2, was one of those implicated by prisoner No. 1; in his house was found property sworn to as plaintiff's, his previous character not good, his defence is a denial and the property he claims as his own *marked* by his own relations as witnesses, who have made several misstatements as to the value and use of the articles.

Prisoner No. 3, the same proof against, and the same sort of defence as No. 2, but not so well backed up by his witnesses, a bad character.

Prisoner No. 5, also implicated by prisoners Nos. 1 and 2. A *kodalee* and a piece of cloth, claimed by prosecutor, were found in his house, the cloth is rather peculiar, and of a finer description than would be usually worn by persons of the prisoner's station in life, and is not mentioned by his witnesses, the other article is so. Taking all the circumstances into consideration, I think the evidence of the prosecutor and his witnesses, who are all respectable men, is more to be relied on, than the defence of the prisoners and their evidence, I therefore, with exception of No. 4, find them guilty. No. 1, of dacoity, or being accessary thereto, he being a servant, ar d of having property obtained by dacoity, I sentence him to ten (10) years' imprisonment with labor in irons.

Prisoners Nos. 2, 3 and 5, I find guilty on the 2nd count, and sentence to (7) years each, with labor in irons, and a fine of Rs. 357-10-6, under Act XVI. of 1850.

The conduct of the police calls for no remarks except, that of the village police appears to have been very remiss on the night of the dacoity.

Remarks by the Nizamut Adawlut.—(Present Messrs: H. T. Raikes and J. H. Patton.) The evidence against the prisoners is said to consist of the confession of prisoner No. 1, before the police and the magistrate and the discovery of property in the houses of Nos. 2, 3 and 5.

The confession of prisoner No. 1, before the magistrate is not an admission of his own guilt. Its purport is indirectly to implicate other persons, and it wears the appearance of having been suggested by the police to the prisoner that he might be made a witness against those he accuses. It is wholly insufficient to found a conviction upon.

The old pots and pans found in the houses of the other pri-

soners, together with a *dhotee* and *kodalee*, are claimed respectively by them and the prosecutor, all of whom cite witnesses in support of their own assertions. As the possession of these articles is the only thing against the prisoners, and the point of identity is not so unquestionably proved against them, as to admit of no doubt, we regard the evidence as insufficient to establish their guilt. The prisoners must be acquitted and released.

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Case of POBESH MOOCHEE and others.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MUSST. PEYAREE JAN *versus* SHEIKH SHUMSHAIR ALLY.

Behar.

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Case of SHUMSHAIR ALLY.

Appeal rejected; the conviction being however based on a different interpretation of the evidence, than as construed by the sessions judge.

CRIME CHARGED.—1st count, severely wounding the prostitute Peyaree Jan, prosecutrix, with a sword with intent to murder her: 2d count, stealing ornaments valued at Rs. 165 from the person of the said prosecutrix after wounding her.

CRIME ESTABLISHED.—Severely wounding the prosecutrix with some fraudulent design.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 14th June, 1856.

Remarks by the sessions judge.—The prosecutrix, a prostitute, was inveigled by the prisoner, a stranger of a few days acquaintance to accompany him, as alleged at 8 P. M. of 5th November last, under pretence of her taking service with the assistant magistrate. The prisoner brought her to a then-unoccupied bungalow, the chowkeedar of which Purran Beyldar witness No. 6 apparently lent himself to the trick. The compound of this bungalow and that of the assistant magistrate abut each other. The bearers Nos. 10, 11 and 12, who carried her to the bungalow were dismissed and told to call for the purpose of taking her back again the next morning. There then remained present Chimpa Jolaheen, witness No. 5, the prosecutrix's attendant who had also accompanied her and the chowkeedar Purran; both of whom after he had taken the

Wt. No. 5, Musst. Chimpa Jolaheen.
" " 6, Purran Beyldar.
" " 7, Boodhoo Jolaha.
" " 8, Kurraydeen Kuttuk.
" " 9, Sheikh Boodhoo.
" " 10, Motee Kahar.
" " 11, Toofanee ditto.
" " 12, Newul ditto.

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prosecutrix inside the bungalow, the prisoner is said to have sent out of the way under pretence of fetching food and drink. On their departure, the prisoner thus left alone with the prosecutrix inside the bungalow according to her account, continued for a time walking up and down armed with his sword, which he suddenly drew and struck her on the back of the neck. He repeated a blow on the head and deprived her of some of her jewels. She got away into one of the side rooms, remained there all night and the first real alarm of the occurrence given by the prosecutrix was her shewing herself outside the bungalow the first thing the next morning in her wounded state to witnesses Nos. 5 and 6, and the bearers Nos. 10, 11 and 12, who had returned as directed the previous evening. In the meantime the prisoner had disappeared after having been seen by witnesses Nos. 5 and 6, who had come back from the errand on which he had despatched them and remained outside the bungalow. He managed to evade apprehension for some time until captured on 8th February last, at Kurruckdea in the Hazareebag district through Ahmed Ally a mohurrir in the Opium office there, and who appears to have been an old acquaintance of the prosecutrix.

The prosecutrix had a severe though not a dangerous incised wound across the back of the neck, a slight wound on the head, and a slight wound on her left hand, which she cannot explain how she received, and which Dr. Allen is of opinion, she could "not have received from guarding the wound on the back of her neck as it would most probably have been much more severe."

Wit. No. 4, Dr. Allen.

She was under medical treatment between twenty to twenty-five days.

The prisoner pleads "*not guilty*" and ignorance as to how the prosecutrix came by her wounds. He comments on the improbabilities of the case and the total absence of all direct evidence against him. He charges the darogah, through his intimacy with Musst. Jooneea, prostitute, and persons of that class of having got up the case against him in hopes of his own advancement, and in furtherance of his captor Ahmed Ally's spite against him originating on a petty dispute between them during the mohurrum, three years ago. If such an old and petty spite could involve such consequences, it is not likely his capture would have been left to the chances of so many months' delay. He also sets up an *alibi* to his having been absent at the time at Kurruckdea and cited several witnesses who, however, do not substantiate it, nor can they explain why the prisoner was at Kurruckdea when apprehended, though it happened to be his first visit there.

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The jury* unanimously convict the prisoner on both counts.

* Sheikh Akbar Hossein, town of Behar.
Syud Imambux Duhoyeree of Behar.
Jowahirlal of Dighora of Behar.
Heeralal of Kenynolee of Behar.

It is impossible to credit all the particulars stated for the prosecution. They are full of the grossest improbabilities, if not impossibilities. Whether prosecutrix, witnesses, or prisoner, all have been playing a part with some nefarious object in view as far as is presumable from the record, palpably for the purpose of causing personal annoyance to the assistant magistrate. Whether as regards the occurrence itself, the tale for the prosecution, the prisoner's successful evasion of justice for 'he time being, all seem to have been rehearsed with a degree of deportmental skill as I seldom observe except in cases got up by or exaggerated by persons of police experience. The prisoner will give no particular account of his previous occupation or character. He is a resident of Aurungabad in this district, but at the time of the occurrence, was a sojourner of a few days in a prostitute's house at Gya, which he quitted suddenly. His father appears to be interested in a petty suit pending in the principal sudder ameen's court. He has all the smattering of a mookhtar, and amongst the articles left behind him in the prostitute's house was an English Spelling Book ; such a character is possibly a tool in the hands of more designing persons, as accounting for the part he played in the case, from the view I take of it.

Wit. No. 22; Musst. Hossoinbux.

According to the tale for the prosecution, the prosecutrix must have been wounded about 9 to 10 P. M. and on questioning Dr. Allen " Whether from the effect of such a wound across the back of the neck she could alone have taken care of herself the whole night until break of day the next morning, and then, for the first time, have walked out into the verandah and given information of the event ?" He replied " She must have suffered from a considerable loss of blood, but he should rather doubt her having remained so long a time alone, unless the blood had been stanched." It is difficult to understand how a wound of this kind could have been so dexterously managed with a sword on such a vital part as the neck without proving more dangerous, and to this suspicious character must be also added the fact, that the two blows which, according to the prosecutrix, followed that on the neck, the one on the head and the other on the left hand, were of the most trifling as the last was of the most unaccountable kind. This was never the assault of a robber, made for the purpose of depriving her of her jewels, whilst she was capable of setting up an alarm which the locality itself in every respect favoured and to all of which she minutely deposes. Her's is the only evidence on this point and her

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ALLY.

evidence generally on her own shewing is not to be depended on. It is in every respect overcooked. The bungalow itself is of the smallest kind, smaller than a dâk bungalow, and the two doors of the centre room where she says she was wounded open east and west within three or four paces upon the thoroughfare on each side and the out offices both of the bungalow itself, as well as those in the assistant magistrate's compound are close by north and south. In the former it is allowed there were some working coolies, and in the other at that hour of the night there must have been many other persons within call, who could not have failed to have heard any alarm had it been set up as the prosecutrix pretends she did and as heard by witn ss No. 6, and according to him by witness No. 5, and herself also as stated by her before the officiating magistrate. Besides the prosecutrix herself admits the door was open by which she had entered, yet she unaccountably escaped into the side-room and there remained all night whilst in her senses endeavouring to grope her way out, which in so small a room she could not have failed to find at once had she tried.

Adverse to this again, only one or two drops of blood were found in the centre room where she says she was wounded, but the side room, the window of which is raised from the ground and from which blood appeared to have profusely fallen, looked on the assistant magistrate's out-offices which are so close that prosecutrix from such a position could not have failed to see them at any hour of that night. She had thus ample means of escape, ample opportunities to set up an effectual alarm, and yet she availed herself of neither. There are many other gross inconsistencies and improbabilities, it would only needlessly lengthen this report to detail, and I will therefore merely add that the witnesses Nos. 5 and 6's conduct and evidence throughout, especially the latter's is of like character. These two witnesses at first kept themselves out of the way before this court, but they eventually attended and played their parts to the last. They returned in time according to witness No. 6, and the prosecutrix and witness No. 5 also before the officiating magistrate to hear her alarm, yet they remained quiet. I therefore utterly disbelieve so much of the tale, so cunningly kept up, of the prosecutrix having been wounded about 9 P. M. but I think all the circumstances of the case, the evidence collectively as well as the prisoner's weak defence, establish the fact of the prisoner's having taken the prosecutrix to this bungalow and there, for some purpose or other before morning, of having severely wounded her either with or without her consent. I accordingly acquit him on both counts charged, but on strong presumption convict him on the minor one of severely wounding the prosecutrix, with some fraudulent design and have sentenced him as stated below.

1856. November 12. Case of SHUMSHAIR ALLY.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We see no reason to interfere with the sentence passed upon the prisoner; but the sessions judge seems to us to have thrown doubts and suspicions on the principal part of the evidence very unnecessarily.

When the prosecutrix and the two chief witnesses, her *dhye* and the chowkeedar, first gave their respective accounts of the case, their statements were quite consistent with each other and by no means improbable. The girl was taken to the empty bungalow by the prisoner, on pretence of the assistant magistrate meeting her there; and the chowkeedar in charge of it, either from previous concert with the prisoner, or on the representation made by him, gave up the key and admitted them into the house. The prisoner then got rid of the *dhye* and chowkeedar by despatching them on errands to the bazar; and taking advantage of their absence, assaulted the girl with his sword, who managed to get away from him into another room of the bungalow; the prisoner either did not follow her, or could not in the darkness discover her; and probably she at the time kept quiet in order to conceal herself, but on the return of the two witnesses referred to, the prisoner pretended the assistant magistrate had come to the bungalow, and was engaged with the girl; and that he was going for a *charpoy*, cautioning the chowkeedar and *dhye* against entering the house while the sahib was there; and accounted for the girl's making some noise, by saying, that the sahib was the cause of it. The *dhye*, however, wished to go to her; but was prevented and forbidden by the chowkeedar; in this way nothing was known of what had occurred until the morning; and the reasons above given seem to us quite sufficient to account for the delay.

The sword, which the prisoner had with him, was left in the bungalow, probably because he had laid it aside when taking off the girl's ornaments; and either could not recover it when leaving, or did not like to appear with a naked sword in his hand before the *dhye* and the chowkeedar on their return.

It is impossible to believe that the girl even had such wounds inflicted with her own consent; and we see no good reason to doubt the general truth of her statement as to the assault and robbery; but as the prisoner's conviction stands, we can only confirm the sentence without interfering with the grounds on which the sessions judge has based his orders.

PRESENT:

J. S. TORRENS AND C. B. TREVOR, Esqs.
Officiating Judges.

GOVERNMENT
versus
DASEE DOMENEE (No. 11,) JIBUN DOME (No. 12,) ALLADEE DOMENEE (No. 13,) AND BHUBO DOMENEE (No. 14.)

East Burdwan.

1856.

November 12.

Case of DASEE DOMENEE and others.

Prisoners released in consequence of the insufficiency of the evidence against them.

That evidence proved that the depositions were taken down by omlah, who had deceased on certain dates, and that they were subscribed by the deputy magistrate, it proved nothing, however, *regarding the mode in which those depositions were given* by the prisoners charged with perjury and in the absence of such evidence, the Court found itself, as judges of fact, unable to find

CRIME CHARGED.—Nos. 11, 12, and 13, perjury in having on the 15th and 16th of April, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Cutwa, that one Lukhee Domenee was not ill from cholera at the time of her death and in having on the 19th of June, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating sessions judge of Burdwan that the said Lukhee died from the effects of cholera, such statements being contradictory of each other on a point material to the issue of the case; No. 14, perjury in having on the 15th of April 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Cutwa, that one Lukhee Domenee had not been attacked by cholera, and in having on the 16th July, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating sessions judge of Burdwan that the said Lukhee had been attacked by cholera; such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East Burdwan, on the 27th September, 1856.

Remarks by the officiating sessions judge.—Before the deputy magistrate, the prisoners deposed in detail to circumstances which tended to show that Thakoordoss Dome had killed his wife Lukhee Domenee; and affirmed positively that the latter had not been attacked by cholera or a *bomet* complaint *(bhed.)* At the sessions they merely stated that Lukhee had died of cholera.

The prisoners have little or nothing to say in their defence; and their witnesses prove nothing in their favor.

The law officer acquits the prisoners, because the foujdary depositions have not, in his opinion, been proved in the manner required by the Mahomedan law.

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To prove those depositions the best procurable evidence has been adduced. The omlah who wrote the depositions are both dead, and the deputy magistrate before whom they were taken has gone to England. Persons acquainted with the handwriting of those omlah and of the deputy magistrate have given evidence.

Believing that the prisoners have been guilty of wilful and gross perjury, I would recommend that they be sentenced to five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens and C B. Trevor.) This case has been referred in consequence of a difference of opinion between the law officer and the sessions judge.

That the contradictory statements were intentionally and deliberately made and failing this fact, the crime of legal perjury was not, in the opinion of the Court, made out against the prisoners.

The law officer acquits the prisoners because the depositions before the magistrate have not been proved in the manner required by the Mahomedan law; the judge is satisfied with the evidence produced, and, finding the prisoners guilty of wilful and gross perjury, would sentence them to five years' imprisonment with labor in irons.

The prisoners are charged with perjury, in having on the 15th and 16th April, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Cutwa, that one Lukhee Domenee was not ill from cholera at the time of her death, and, in having on the 19th June, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the officiating sessions judge of Burdwan, that the said Lukhee died from the effects of cholera; such statements being contradictory of each other on a point material to the issue of the case.

In a case of this nature, it is necessary that the original depositions given by the prisoners on the two different occasions be before the court; that they be proved in evidence, and that the mode in which the prisoners gave those depositions, viz., whether intentionally and deliberately or otherwise, be also proved by evidence before the court.

In the present instance, depositions are before the court purporting to be the original depositions taken before the deputy magistrate; but as the writers of the depositions before that officer have deceased, and the deputy magistrate before whom these were taken is in England, persons acquainted with the handwriting of those *omlah* and of the deputy magistrate, have given evidence, in order to show that the depositions produced in court were those taken down in writing before the deputy magistrate, on the 15th and 16th April, 1856.

This evidence we consider insufficient; for though it proves that depositions were taken down by the deceased *omlah*, on the dates in question and were subscribed by the deputy magistrate, it tells us nothing regarding *the mode in which those depositions*

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were given by the prisoners charged with perjury; and in the absence of evidence on this point, a point regarding which, no legitimate presumption can be drawn from the depositions before us, we find ourselves unable, as judges of fact, to find that the statements made by the prisoners on the 15th and 16th April, 1856, were intentionally and deliberately made; and failing this fact, the crime of legal perjury is not made out against the prisoners.

Under this view of the case, we acquit the prisoners and direct that they be immediately released.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MOHUN SAHOO.

Midnapore.

1856.

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Case of MOHUN SAHOO.

Prisoner, belonging to a gang of dacoits, transported.

CRIME CHARGED.—1st count, dacoity on 18th October, 1843, in the house of Radhoo Singh, resident of Amdooley Busuntbarh of thannah Pertabpore; 2nd count, dacoity on 31st March, 1849, in the house of Bishonath Sawunt, resident of Burampore of thannah Baynan, zillah Howrah; 3rd count, dacoity on 6th December, 1850, in the house of Anund Sawunt, resident of Chuck Hureerampore of thannah Pertabpore; 4th count, being by profession a dacoit and having belonged to a gang of dacoits.

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 15th October, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty.*" His identity is sufficiently proved by witness No. 3, Modhoo Pakooriah, a convict in this jail, who was sentenced by the superior Court to transportation beyond sea for life, on the 25th September, 1856. This witness also denounces the prisoner as his accomplice in the three dacoities charged. There is some ambiguity in his deposition in the case of the dacoity in the house of Bishonath Sawunt, record No. 75, as regards his implication of the prisoner, but in the other two counts of the charge, his evidence is clear and distinct.

This witness does not appear to have been yet admitted as an approver, though named as a witness, still under the provisions of Act XIX. 1837, and the Constructions Nos. 1117 and 1173, by the Court of that law, there is no bar to the admission of his

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evidence; and I see no ground to distrust what he has deposed to against the prisoner.

The further evidence against the prisoner is his confession before the assistant commissioner for the suppression of dacoity and the record of the three dacoities charged as noted in the margin.* The confession has been proved to have been voluntary and is duly verified.

* *Nuthee* No. 231, dacoity in the house of Radhoo Singh.
Nuthee No. 75, dacoity in the house of Bishonath Sawunt.
Nuthee No. 424-238, dacoity in the house of Anund Sawunt.

The record of the case No. 231, (also numbered as heinous No. 571,) shows a dacoity to have been committed on the 18th October, 1843, in the house of one Radhoo Singh of Amdooley, when property valued at 80 Rs. was plundered. The prosecutor wounded some of the dacoits and recognized Gookool Mahapater Sirdar and Burrut Mytee. The first was arrested the following day and confessed to the dacoity on the 20th idem. This was followed by the arrest of Santiram Jana, Anundee Manjee, Gyaram and Bikram and Radhoo Mahapater, Kooroo, Kinkur and Beychoo Janas, Sreemuttee Kunchonee and others, who made confession of their guilt to the police, but retracted it before the magistrate, except Kunchonee, who admits receipt of the property.

On the 25th November following, eleven men were committed for trial at the sessions, eight of whom were convicted on the 20th January, 1844.

The record of the 2nd case No. 75, shows a dacoity occurred in the house of Bishonath of Laopalah, on the 31st November, 1849, and, that property valued at Rs. 2,549-7 was carried off, some fifty men appear to have been engaged in this robbery. On the prosecutor's suspicion, more than ten men were arrested by the police, but not sent into the sudder station. The magistrate summoned the prosecutor and witnesses, but found no sufficient ground for further proceedings against the accused, whom he ordered to be discharged from bail, returning to them such property as had been found in their houses.

The record of the third dacoity charged No. 424, (heinous No. 238,) shows it to have taken place on the 6th December, 1850, in the house of Anundee Sawunt of Hureenarain Chuck or Pore. Property valued at Rs. 137-11 was plundered. Entrance was effected by the dacoits getting over the *chopper* of the enclosing wall. The prosecutor deposed to having recognized Goorain Poriah Chowkeedar, Sreemunt Aduk, Anundee Mytee, Gour Singh, Keenoo Singh and Modon Singh Dufturees, and that he suspected others.

The darogah is stated to have been laid up with a bad leg, and deputed the mohurrir to make the enquiry; who, after hear-

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ing the prosecutor's story wrote to the darogah, requiring him to surround the house of Gour Singh and others, which was near to the thannah.

The darogah instead of going himself, sent off some chowkeedars for the purpose, who seized Kashee Singh, Muthoor Mytee and Keenoo Singh, as they were decamping from the house with a bag of property. The prosecutor's brother, Soodaram Sawunt, recognized the property thus found, and also three silver *doomras* recovered from Keenoo's house, as the property of the prosecutor. The prisoners denied having been seized with the sack containing the property.

These three prisoners were committed for trial, on 28th December, 1850, and convicted by the sessions judge on the 11th of the ensuing January. They were all, however, acquitted by the Nizamut Adawlut, on 21st March, 1851, on the ground of the irregularity of the search.

There is no doubt of the fact of the occurrence of these three dacoities, to which, and to twelve other crimes the prisoner has confessed, and I would convict him on that confession supported, as it is, by the records of the cases and the evidence of Modhoo Pakooriah, of the dacoities with which he is charged, and with having belonged to a gang of dacoits, and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The evidence of the approver, supported by the prisoner's own confession before the dacoity superintendent, is quite sufficient for his conviction. We sentence him, as recommended by the sessions judge, to transportation for life for having belonged to a gang of dacoits.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GHOOTOO NUSHO (No. 12,) DOOTEEAH NUSHO (No. 13,) JHOOMRAH NUSHO (No. 14,) JAGEER MAHOMED NUSHO (No. 15, APPELLANT,) ATOOAH NUSHO (No. 16,) DURBUREEAH NUSHO (No. 17, APPELLANT,) ATTAH FUKEER (No. 18, APPELLANT,) OTEE NUSHO (No. 19,) SHURA CHOWKEEDAR (No. 20, APPELLANT,) TUROOAH NUSHO (No. 21,) SHAMEERAH NUSHO (No. 22,) SUREEUTOOLLAH ALIAS SURREE (No. 23, APPELLANT,) RUHMUTTA NUSHO (No. 24, APPELLANT,) KAUDOORAH KOACH (No. 25, APPELLANT,) COCHEE NUSHO (No. 26, APPELLANT,) GUREEBULLAH SHEIKH (No. 27, APPELLANT,) NAZEER MUNDUL (No. 28,) AND DOOKAH ALIAS DOORGOTEEAH (No. 29, APPELLANT.)

Rungpore.

1856.

November 19.

Case of JAGEER MAHOMED NUSHO and others.

Appeal rejected.

CRIME CHARGED.—1st count dacoity in the house of Ramchunder Shah and plundering therefrom property valued at Co.'s Rs. 4,103-6; 2nd count, knowingly taking and being in possession of the property plundered in the above dacoity.

CRIME ESTABLISHED.—Nos. 12, 13, 14, 15, 17 18, 20, 21, 22, 23, 24, 25, 26, 28 and 29, dacoity and knowingly taking and being in possession of property plundered in the above dacoity and No. 27, knowingly taking and being in possession of property plundered in dacoity.

Committing Officer.—Mr. J. C. Dodgson, officiating joint-magistrate of Bograh.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 5th August, 1856.

Remarks by the sessions judge.—This case has been tried by me, without the assistance of the law officer or of assessors, under the provisions of Act XXIV. of 1843.

It is proved that on the night of the 9th January, the prosecutor's house was attacked by a gang of dacoits, who effected a forcible entrance, beat the prosecutor and his brothers, and plundered the house of property in specie, jewels, &c , valued by the prosecutor at Co.'s Rs. 4,103-6.

Information was conveyed immediately to the mohurrir of the Adumdighee thannah, who chanced to be in the immediate neighbourhood, and who proceeded to the scene of the occurrence without delay, where he was joined subsequently by the darogah. The joint-magistrate, however, apparently being dissatisfied with the proceedings of the Adumdighee police,

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deputed the darogah of Bograh thannah on the 11th January, to carry on the investigation. No one having been recognised at the time, suspicion was not directed in the first instance to any parties in particular. The darogah therefore proceeded to enquire whether any parties of notorious bad character had been absent from their houses on the night of the dacoity in question. After making enquiry in several of the surrounding villages without success, he at last on the 13th January, came to the village of Borai, where he learnt that on the Wednesday night on which the dacoity took place, Khureedah, Kookoorahchand Fukeer and Panchooa, released convicts, were absent, having left the village in the evening, accompanied by Ghootoo prisoner No. 12, and Jhoomrah, No. 14, and another, and returned the next day at different times, asserting different excuses for their absence.

At the request of the prosecutor, the houses of these parties were searched, Ghootoo, No. 12, on being questioned, admitted having committed this dacoity in company with Kookoorah, Jhoomrah, No. 14, Dooteeah No. 13, and Gureebullah, No. 27. He further stated that the same party had gone out for the like purpose on the previous Monday, but returned without accomplishing their object in consequence of the lateness of the hour at which they arrived. At the same time he gave up a gold *tuktee* (No. 1,) *tabeez* (No. 2,) and a piece of a broken gold armlet (No. 3,) which he stated he had obtained as his share of the spoil, and that a Koach whose name he did not know, had got the remaining part of the armlet.

Dooteeah, No. 13, likewise confessed, and gave up a silver bracelet (No. 4,) implicating Shureeutoollah *alias* Surree No. 23, Shameerah No. 22, Ruhmutta, No. 24, Kandoorah Koach, No. 25, Dookah No. 29, Jageer Mahomed, No. 15, Nazeer, No. 28, as well as Ghootoo, No. 12, Gureeboollah and Jhoomrah named by Ghootoo; and Atooah No. 16, who escaped after the case was committed.

These all likewise confessed, with the exception of Gureeboollah, and gave up or were found to have been in possession of several items of property which were identified by the prosecutor as his.

Jageerah, No. 15, implicated, in his confession Durbareeah, No. 17, Attah, No. 18, Otee, No. 19, (who has escaped), Shura Chowkeedar of Raikally, No. 20, and Turooah, No. 21.

Sameerah, No. 22, named as one of his accomplices, Oochee, No. 26.

Oochee likewise confessed, and gave up Nos. 61 and 62, as his share of the spoil.

Eighteen prisoners with eighty-three items of property were sent in by the darogah. All these had confessed before the darogah with the exception of Gureeboollah, No. 27.

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Before the joint-magistrate, prisoners No. 12, Ghootea, No. 13, Dooteeah Nusho, No. 14, Jhoomrah No. 16, Atooah, No. 17, Durbureeah, No. 18, Attah Fukeer, and No. 28, Nazeer Mundul, repeated their confessions, the remaining prisoners retracted their mofussil confessions, but the proof against them seeming to the joint-magistrate to be sufficient, he committed the whole eighteen to stand their trial before this court on the 15th February, 1856.

There having been no jail delivery at this station since January, the case has been taken up under some disadvantages, eight of the prisoners escaped from jail, but of these, six have been re-apprehended and put upon their trial.

That the prisoners, with one exception, voluntarily confessed before the darogah, is proved, and that six of those present confessed also before the joint-magistrate, is also satisfactorily established, though there are some discrepancies as the exact place where these several confessions were recorded, owing to the witnesses who witnessed the confessions on different dates, some in the mofussil, some in the magistrate's court, and some in his private house, being unable, through the lapse of time, to specify distinctly on what date, and where they were taken, nor do the confessions themselves shew this. The essential point being proved, however, by the evidence of the witnesses and the certificate of the joint-magistrate himself, I am not disposed to attach much importance to the discrepancies alluded to.

The evidence against Ghootoo No. 12, consists of his confessions before the darogah and joint-magistrate, his proved absence from his house, on the night of the dacoity, as sworn to by Haroo Chowkeedar, witness No. 5, and the finding in his possession of articles Nos. 1, 2 and 3, of the plundered property, which he himself gave up. He has called one witness to prove that he was beaten and tortured by the darogah and police, to extort a confes ion, and that one Milun Goindah put into his hands the piece of gold, No. 3, and another witness to prove that Nos. 1 and 2, are his own property. The witness to the ill-treatment states that Milun Goindah struck him, telling him that the darogah had come, and he must give up the property he had acquired, but adds that from the position in which the darogah was standing, he might have heard the prisoner call out, but could not see the assault, and as he professes to know nothing further, his evidence goes but a short way to rebut the evidence as to voluntary confession and production of the property by defendant, and will not account for his adhering to his confession when brought before the joint-magistrate, or for his inability to prove the property he now claims, to be his own.

Against Dooteeah, the evidence is similar, before this court he asserts that he was ill-treated by the police, and denies hav'ng

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made any confession whatever, either before the darogah or joint-magistrate. He called witnesses, however, to character only.

The evidence against Jhoomrah consists of his confession before the darogah and joint-magistrate, the production of different items of plundered property, numbered 5 to 14½ by the parties with whom it had been deposited by him. (The fact of his having so disposed of the property being also established by clear evidence) and his proved absence from the house on the night of the dacoity. He makes similar complaints of ill-treatment on the part of the police, claims the property sent in, as his own, and denies having made any confession whatever, but calls witnesses to character only.

Jageer No. 15, confessed before the darogah only, but gave up different items of plundered property numbered 16 to 20. He now denies having made any confession at all, pleads an *alibi*, and asserts that he was ill-treated by the police. He has, however, failed to prove this, and his witnesses to character prove nothing in his favor.

Atooah No. 16, was not in attendance at the trial.

The evidence against Durbareea No. 17, consists of his confessions before the darogah and joint-magistrate, which have been duly verified, and the production of Nos. 25 and 26, of the plundered property, which he is proved to have voluntarily given up. He now asserts that his confession before the darogah was dictated by the darogah; that he was ill-treated in order to make him confess, and that he does not know what defence was made by him before the joint-magistrate, but has produced evidence to character only.

The evidence against Attah Fukeer No. 18 is similar. He gave up a *hookah* No. 27. He now asserts that he made no confession at all, and that the property found was placed where it was found, by one of the goindas. He called witnesses to character only.

Otee Nusho No. 19, is not in attendance.

Sura Chowkeedar No. 20, confessed before the darogah only but gave up items of the plundered property numbered 31 to 34. He now asserts that he was forced to confess, and to avoid further ill-treatment from the police, gave up property belonging to himself. He has failed to prove any point urged in his defence.

The evidence against Turooah Nusho No. 21, consists of his confession before the darogah, which is proved to have been voluntarily made, and the production by him of articles Nos. 35 and 36, of the plundered property—against this there is to be placed merely his unsupported assertion of innocence, and of ill-treatment on the part of the police. One of his witnesses speaks of his previous apprehension on suspicion in a former case, and neither of them can depose to more than that he is

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part owner of a certain number of ploughs, and cultivates a certain portion of land.

Shameerah Nusho No. 22, is proved to have made a voluntary confession before the darogah, and to have of his own accord made over several items of plundered property numbered 37 to 42. His defence is similarly unsupported by evidence.

The evidence against Surceutoollah No. 23, is similar. He is proved to have produced Nos. 43 and 44, of the plundered property in court. He now asserts that he was ill-treated; that the property was placed at night by the goindah in the place from which he is stated to have produced it, and the darogah has brought witnesses from another village instead of calling his immediate neighbours. He calls witnesses to character only. I observe that the darogah in his report has accounted for not taking witnesses from the village, by stating that the village consists of eight families only, and that all were supposed to be concerned in the dacoity.

Against Kuhmatta No. 24, the evidence is similar. He gave, No. 45, of the plundered articles in court. His defence is similar to that of No. 23, and the same remarks will apply.

Kandoorah Koach No. 25, confessed before the darogah, and produced items numbered 46 to 59, of the property in court. He denies having confessed; asserts that he was grievously maltreated by the police, but calls witnesses to character only, who are unable to depose to much in his favour.

The evidence against Oochee No. 26, is similar. He produced items Nos. 60 and 61, of the plundered property. He alleges ill-treatment on the part of the police, but calls witnesses to character only.

Against Gureeboollah No. 27, there is the evidence of witness No. 6, Hashna Chowkeedar, of his having been absent from the house, on the night of the dacoity, and there is further evidence of his return on the following day with sundry items of property numbered 62 to 74, which he gave to his wife and servant to dispose of, and which were recovered from those parties, and from Jinardee (with whom a portion of it was placed by the wife) in the prisoner's presence. He asserts that his house was surrounded by the police on Sunday; that on the Monday he was taken to the darogah, and by him carried about from place to place for ten days, being beaten and tortured at intervals. That certain items of property were made over to his wife, and she was told to place with them a gold mohur and some rupees and small silver pieces belonging to himself; that on Tuesday, the 10th day after his arrest, while he was confined in guard under charge of Gungaram Singh burkundaz, his house was searched, and in the evening the darogah brought the property to him, and asked whose it was. He claimed only the money, and denied any knowledge of the rest.

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In support of his defence, he called witnesses to prove that he had purchased the gold mohur at Gopeenathpore *mela* and realized the rupees by the sale of rice, and Gungaram Singh Burkundaz, to prove how he had been ill-treated by the darogah. His witnesses to the first point denied any knowledge of either of his assertions From the evidence of the burkundaz, it is plain that he must have been arrested at all events as early as the evening of Tuesday 15th, and that he was from that date, placed under a guard in the same manner as the other prisoners, and was carried about by the darogah from village to village for several days, till at last his house was searched and his defence taken at his own village Mostufapore, which appears to have been on Sunday 20th. On the 21st, Monday, he was sent in, and his defence was taken by the joint-magistrate, on the 23rd. The joint-magistrate has stated at the foot of the calendar, that though the prisoner was in attendance upon the darogah for several days previous to his defence being taken, he was not actually arrested till 20th January, and that the darogah has, in his opinion, exercised a sound discretion in keeping him as he did, instead of leaving the spot to proceed to Gurreeboollah's house at a distance which would have prevented his having any chance of apprehending the rest of the gang.

The explanation of the darogah, to which allusion is made, I find, was furnished upon a call from the joint-magistrate to explain why no steps had been taken for the apprehension of Gurreeboollah, who appeared, from the confessions taken, to have been the leader in the dacoity, and was mentioned by Jageer to be in attendance. This explanation was called for on the 20th January. The darogah explained that on the mention of Gureeboollah by Ghootoo, the first confessing prisoner, a burkundaz was despatched to guard his house, but that the burkundaz had found Gurreeboollah at home, and sent him to the darogah, by whom he was retained in attendance in the same way as other parties to this case, as his house was at a distance, and there would be risk of losing the other members of the gang by going there at once. The darogah makes no mention, in this reply of dates, nor does he explain how the other parties to the case are kept in attendance.

I can find no mention in the papers of the deputation of any burkundazes to watch the prisoner's house, nor of the arrival of Gureeboollah at the darogah's camp. There can be no doubt that this is irregular. It is plain that Gureeboollah was treated as a prisoner from the time of his arrival. To say that he was not actually arrested till the 20th, is a mere quibble of the darogah. If the burkundaz, being directed only to watch his house, arrested him, he acted illegally under the circumstances in so doing, and, in keeping him under arrest, the darogah acted illegally, and in direct contravention of the explicit orders of the

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Sudder court, as conveyed in their Circular No. 12, November 12th, 1855. The joint-magistrate was guided solely by the darogah's report, but the evidence (here taken) shows, that the prisoner was actually arrested, not later than the 15th, and kept under close restraint from that date till the 21st, when he was sent into the station. Furthermore, it appears that from the village where Gureeboollah lives, to that in which the darogah was staying when he reached his camp, is a distance of from one and a half to two miles, while the villages of the other prisoners, whose houses the darogah first went to search, are at greater distances. It does not appear, therefore, that the reason alleged by the darogah, for delaying to search Gureeboollah's house, can be the real one. It is the house of all others that one would have supposed would be likely to have been first searched, inasmuch as Gureeboollah's had been represented by all the prisoners to the darogah, as one of the principals in the dacoity, and as having carried away the lion's share part of the spoil.

However, as Gureeboollah has denied from first to last, as the evidence against him is strong and as beyond this delay in taking his defence and sending him in, he has been unable to establish any thing in his favor. There is nothing that could justify an acquittal in his case.

Nazeer Mundul, prisoner No. 28, confessed before the darogah and magistrate, and gave up Nos. 75 to 77, of the property in court. He was, he asserts, forced to confess, but cannot remember what was written, and after coming to the station the darogah early in the morning gave him a *hookah* to smoke, which took away his senses, and when taken to the joint-magistrate, he was asked whether he had committed the dacoity, he denied and remained silent, and the mohurrir copied what had been written by the darogah. He pleaded an *alibi*, which he was unable to establish, and his witnesses to character do not speak in his favor.

Dookhah confessed before the darogah, and gave up items Nos. 68 to 70, of the plundered property. He now declares that he was beaten, and gave up his own property. He has been unable to prove either the violence shewn to himself, or that the property which he is proved to have given up as having formed a part of the plundered property, really belongs to himself.

The evidence leaves no doubt upon my mind of the guilt of all the prisoners. There is, in my opinion, sufficient legal evidence against all on the second count, and against all, with the exception of Gureeboollah No. 27, on the 1st count also, though the circumstances proved against Gureeboollah may not suffice to raise a legal presumption of his guilt on the first count charged, there can be very little moral doubt, that he was one of the leaders of the gang, and as he has once before been convicted of heinous crime, a severe punishment is called for in his case.

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Shura Chowkeedar is likewise deserving of more severe punishment than his companions convicted on the 1st count. The crime of dacoity appears to be very prevalent in the district, and a severe sentence in the case of all the parties convicted seems therefore to be called for.

I therefore convict Shura Chowkeedar, prisoner No. 20, on both counts, and sentence him, in consideration of his having been employed as a chowkeedar, to imprisonment, with hard labor in irons, in banishment for ten years.

Prisoners Ghootoo No. 12, Dooteeah No. 13, Jhoomrah No. 14, Jageer Mahomed No. 15, Durbareeah No. 17, Attah Fukeer No. 18, Turooah No. 21, Shameerah No. 22, Sureeutoollah *alias* Surree No. 23, Ruhmottah No. 24, Kandoorah Koach No. 25, Oochee No. 26, Nazeer Mundul No. 28, Dookhah *alias* Doorgoteeah No. 29, I convict similarly on both counts, and sentence them to punishment with hard labor in irons, in banishment, for eight years.

Gureeboollah Sheikh No. 27, I convict on the second count only, and sentence him, in consideration of the circumstances above alluded to, to imprisonment with hard labor in irons for eight years.

The prisoners to be fined in the sum of Company's rupees 3,472-6-6, the difference between the value of the property plundered and that recovered, and to be held jointly and severally liable for the amount of the fine thus imposed, which, on realization, will be applied to the reimbursement of the prosecutor's losses, as prescribed in Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We see no reason to interfere with the conviction of these prisoners. The possession of the plundered property and their voluntary delivery of it, support their mofussil confessions. The property was in no instance recognized by their witnesses when they attempted to account for its possession by claiming it as their own. The principal facts, moreover, remarked upon by the sessions judge, in his detail of the case, are fully borne out by the evidence.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

ISHWUR BAGDI.

Hooghly.

1856.

November 19.

Case of ISHWUR BAGDI.

Prisoner placed on security for good conduct, released on appeal.

CRIME CHARGED.—1st count, dacoity with murder and wounding, on the night of the 30th January, 1854, in the house of Khetter Mohun Neoghee of Hadulparah, thannah Salemabad, zillah Burdwan; 2nd count, dacoity on the night of the 3rd February, 1854, in the house of Moheem Mundul of Hazeepoor, thannah Dhonyakhalee, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the dacoity commissioner at Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 3rd June, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with participation in two dacoities, and with having belonged to a gang of dacoits. Although the evidence is insufficient to convict him on these charges, it is quite sufficient to prove him to be a notorious robber of dangerous character, whom it would be unsafe to set at liberty without substantial security for his future good behaviour.

III. 1819.
VIII. 1818, 10.

The two approver witnesses confessed to having been engaged in the dacoity at Hodulpara (on the night of the 30th January, 1854,) on the 26th July, 1855, and 3rd May, 1856, respectively, and denounced the prisoner; but the latter date is subsequent to the prisoner's apprehension by no less than eight months. Prisoner is said to have been the leading man in the affair, and as the dacoits committed murder, on the occasion, the charge, if brought home to him, would involve capital punishment. The police at the time misrepresented the circumstances of the case, and the man, who was killed, was reported to have died a natural death. The fatal blow was struck by a dacoit of the name of Mohuroodeen.

In confirmation of the above direct evidence there is merely the written confession of an accomplice of the name of Jadoo Haree, who has lately made his escape from the dacoity commissioner's guard. He was in this dacoity, and declared, (on 28th July, 1855,) the prisoner and the first approver witness were with him.

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We have precisely the same evidence, on the second count, where, however, Jadoo Haree, named the second and not the first approver witness as in the 1st count; and in corroboration as to the prisoner's complicity there is nothing further. The two approver witnesses are brothers, and Jadoo Haree is merely related to them.

Both the approver witnesses say, the prisoner was himself a Sirdar of dacoits; and that in the Hodulpara affair he joined his gang with that of Baranussi to which the approvers belonged. The first approver declares he has committed several dacoities with the prisoner, and the second approver three. In the third that at Mooraband, I find this witness did name the prisoner as one of the party in his confession taken down on the 3rd of last month. I also find that the prisoner was denounced in the Milkee dacoity in September, 1844, and that he was arrested in the Jolekool dacoity in 1854. At that time, prisoner allowed he was in the service of a Baboo at Astoy, the two approvers now saying that it was during their joint-service there, this dacoity was planned and perpetrated. It further appears the prisoner is the grandson of a convicted dacoit, and that a former magistrate of Hooghly, knowing him to be what he is, gave him service as a police burkundaz to keep him out of the way of committing dacoities and because he was a good *latteal.* Lastly, the prisoner's own witnesses depose to his being a notorious bad character.

I acquit the prisoner on the several specific counts on the calendar, but order the dacoity commissioner to exact 100 Rs. security from him under the terms of Section 10, Regulation VIII. 1818.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The sessions judge has not stated the grounds upon which he has concluded that the prisoner is a notorious robber, whom it would be improper to release without security. The Court is therefore left to conjecture what legal grounds arise out of the proceedings to justify the sessions judge's conclusions. We find that the witnesses examined were two approvers, and evidence as to character on the part of the prisoner, together with the records of certain cases descriptive of the occurrences they relate to. For the reasons given by the sessions judge in his remarks, the evidence of the approvers as to the prisoner's complicity in the particular dacoities specified in the indictment is held not to be sufficiently reliable to warrant his conviction; yet it would appear that the sessions judge has sentenced the prisoner under Regulation VIII. of 1818, simply on the ground that he was named by them as participating in other dacoities, and was arrested in the Jolekool dacoity in 1854. The only fact that can be depended upon as unquestionable is, that the prisoner was arrested, as stated, in the Jolekool affair,

which resulted ultimately in his acquittal. The witnesses to character certainly speak very unfavorably on this point; but they enter into no particulars, merely speaking of him as generally known to them as a man of bad character. As far as we can judge of the grounds which have guided the sessions judge in this case, they seem to us of too vague and indefinite a character to warrant the presumption that the prisoner cannot be safely permitted to remain at large without security. We therefore direct his release.

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Case of ISHWUR BAGDI.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

SRIMOTEE LATOOREE.

Chittagong.

1856.

November 19.

Case of SRIMOTEE LATOOREE.

Conviction and punishment of a woman for exposure of her child with intent to destroy life.

CRIME CHARGED.—Having exposed her new born infant child with a view to cause its death.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 17th September, 1856.

Remarks by the additional sessions judge.—The accused woman acknowledged at the police office and before the magistrate, that being in the ninth month of her pregnancy and making a journey on foot, she was suddenly seized with labor pains on the road in the village of Futtehabad, and gave birth to a female child, which believing to be still born she abandoned among the brushwood by the way side. To the magistrate she further admitted that she had heard that a Mahomedan woman had found the child, and that it lived one night and died next day. She said to the magistrate that she abandoned the child because he had not acceded to her petition previously presented to him, praying for an allowance from the author of her pregnancy. This motive seems supererogatory, if in fact, as she had already declared, the child were stillborn. Possibly, however, she meant to say, that if her petition had been favorably treated, she would have had the child decently buried, but there seems little probability that she would really have done so. There

Memo.

The magistrate refused the application for maintenance on the grounds of the woman's ill-repute and the impossibility of ascertaining who had occasioned her pregnancy.

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are discrepancies between her admissions at the police office and before the magistrate as to the place of departure on the journey, during which the child was born and in the description of the place of the birth, but I do not consider that these differences invalidate the general agreement between her three statements at the police office, before the magistrate and in this court.

The admissions of the accused woman are corroborated by the testimony of the companion of her journey, her brother-in-law's or sister-in-law's father তাঐ,* who states that when the accused rejoined him after lagging behind for some time and he asked her why her cloth was bloody, she answered that she had give: birth to a still-born female child and had abandoned it.

* Wt. No. 5, Ram Mohun.

Next we have the evidence of three† persons, one of whom hearing cries found, and the other two saw a newborn female child lying among brushwood by the wayside in the villa;e of Fettehabad, and the statement of a childless woman,‡ who gladly took charge of the infant with the view of bringing it up as an adopted daughter, but only succeeded in keeping alive the feeble sparks of its existence during that day and the ensuing night. On its death, next day the brother§ of this woman proceeded to report the occurrence to the nearest police officer.

† Wt. No. 8, Moorareedhur Paul.
„ „ 9, Somecooddeen.
„ „ 10, Mahomed Sonah.

‡ Wt. No. 7, Joynub Bebee.

§ Wt. No. 6, Mahomed Kamil.

The accused pleads that the child was still-born, and has nothing further to urge in her defence. She calls no witnesses.

The law officer finds the charge not proved.

On the accused woman's repeated admissions of the birth of an illegitimate female child, corroborated by the testimony of her fellow-traveller as to the state of her apparel, and her explanation thereof, and on the evidence to the discovery in the same village of a new born infant of the female sex with the naval string attached and to its survival during a day and a night, I cannot come to any other conclusion but that the accused gave birth to a living infant and consciously and voluntarily abandoned it to its fate.

Convicting her therefore, of the exposure of her new born infant with intent to cause its death, I would, with reference to precedent, name a sentence of seven years' imprisonment with labor suitable to her sex as the penalty appropriate to the prisoner's guilt.

The magistrate has been instructed to keep the prisoner in close custody pending the receipt of the order of the Presidency Court on this reference.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The *futwa* of the law officer acquits the prisoner on the ground, apparently, that the child has not been sufficiently identified as the infant of which the prisoner was delivered; but the evidence on this point is, in our opinion, sufficiently clear. It is proved that a new-born female infant was found at the place, where the prisoner admits she gave birth to one. The time and place of the occurrence so exactly agree, that we think it conclusively proves that the infant found must have been the one, of which the woman had been previously delivered. The only other question left for determination is, whether the prisoner has truly accounted for the abandonment of her child in the belief that it was still-born. There is no doubt that the child lived for several hours after its birth, and that its cries attracted the notice of those who took care of it. The object of the woman in abandoning a dead child, when on her way to her own home, is quite unaccountable, as no feelings of shame could have prompted her to conceal the birth, she having made public her pregnancy and on that very ground applied to the magistrate to compel her paramour to support her. We have no doubt that her failure on this point, as admitted by herself, led her to abandon her child, and not any belief that it was really dead.

Concurring in the view taken by the sessions judge of this case, we convict the prisoner of exposing her child with the intent to destroy life, and sentence her, as proposed, to seven years' imprisonment with labor suitable to her sex.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND KYLOO GWALLAH

versus

LUTCHMUN (No. 16, APPELLANT,) AND MEHURBAN (No. 17.)

Bhagulpore.

1856.

November 21.

Case of LUTCHMUN SINGH and another.

Appeal dismissed in affirmation of conviction by the lower court.

CRIME CHARGED.—1st count, No. 16, wilful murder of Choollye, deceased; 2nd count, culpable homicide of Choollye, deceased. No. 17, accomplice in the above fact.

CRIME ESTABLISHED.—No. 16, culpable homicide of Choollye, deceased. No. 17, accomplice in the above fact.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhauglepore, on the 7th August, 1856.

Remarks by the officiating sessions judge.—This case was tried with the aid of a jury at Monghyr, on the 6th and 7th August, 1856.

Bhyroo Suhoy.
Dilchund.
Umjud Ally.

The prisoners pleaded *not guilty.*

The prosecutor, Kyloo, an old man, being overpowered with grief on account of his son's demise, with difficulty gave his deposition; he was not present at the occurrence, but heard from those who attended the marriage ceremony, how the prisoners had maltreated his son, Choollye, from the effects of which he died. It appears that the prisoners acted as *beeboohurs* or match-makers, and effected a marriage between Gokul and Shunker's daughter. Arrangements being completed, the procession proceeded to a village named Pursundah. On returning, a dispute arose between the prisoners and deceased, about the dowry, or marriage presents, the latter having discovered that the bride's father did not intend to give any, was displeased and considered the *beeboohurs* had made up a bad match for his son. The evidence of witnesses Nos. 1, 2 and 3, for the prosecution, proves that the prisoners struck the deceased with *lattees*, but they were separated by the bystanders, prisoner No. 16, eventually took up a clod of earth, threw it at Choollye with some violence, it broke against the left side of the head, and could not be produced in court, but a similar one, weighing 14¾ *chittacks*, was sent in as a sample. The deceased walked about two *coss* towards his home, with witness No. 15, and others; on arriving at a hill, he was unable to proceed, he remained here senseless until information was sent to his father, who took him home, about 4 o'clock, P. M., on the 17th May, 1856, but he could not speak, and he died the following day

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about twelve noon, while being conveyed to the Monghyr thannah.

The medical officer records his opinion that the deceased died from a fracture of the left side of the skull, which might have been produced by some blunt instrument, for instance, the clod produced in court thrown with violence, the blows inflicted on the back with *lattees*, which were apparent, were unimportant.

Witnesses Nos. 6 and 7 depose to the sooruthal before Police.

Witnesses Nos. 4 and 5, to apprehension of prisoners, and witnesses Nos. 10 and 11, to prisoner No. 16's, mofussil confession, and witnesses Nos. 13 and 14, to his confession before the magistrate both given voluntarily.

Witnesses Nos. 15 and 16, accompanied deceased with others from the place where he was assaulted, to the hill where he became insensible, and could not proceed, they assisted in carrying him home, and are aware, that he died while being conveyed to the station.

Although the prisoners pleaded *not guilty*, Lutchmun No. 16, admits that he acted as beeboohur, and accompanied the marriage procession ; it was returning, and at Monghyr Pursundah the *palkees* were put down, when the party commenced to refresh themselves with "*thadee*," they had a second bout at Puharpore, when the majority got intoxicated; on leaving Puharpore, the deceased abused both the prisoners for making such a bad match, as no dowry was to be given, the deceased being tipsy, struck him with two clods of earth, prisoner No. 16, then took a small clod which struck him in the shoulder, which produced no wound, after this, deceased went home, he cannot account for his death, but cholera was prevalent at the time and he might have died from this disease, he admits having confessed at the thannah and before the magistrate.

Prisoner No. 17 pleads that the witnesses have got up the case against him.

Witnesses Nos. 19, 20 and 21, for defence, can depose to nothing in the prisoner's behalf, the latter one declaring he did not accompany the marriage procession.

The jury find a verdict of guilty against prisoner No. 16, on the 1st count, wilful murder, and No. 17, on the count, accomplicity, in which I did not concur, but considered them guilty, the former on the 2nd count, and the latter on count of complicity, and sentenced accordingly. Prisoner No. 17, being of tender age, I considered the ends of justice would be met by punishing him lightly.

Sentence passed by the lower court.—No. 16, to five years' imprisonment with labor and irons and No. 17, to six months' imprisonment without irons and to pay a fine of 25 Rupees on

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or before the 21st August, 1856, or in default of payment, to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur with the sessions judge in convicting the prisoner. His admissions throughout leave no doubt of his guilt. We reject his appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GOBURDHUN DOSS

versus

Rungpore.

BUNDEE DOSS (No. 1,) AND NUNDODOOLAL (No. 2.)

1856.

November 21.

Case of BUNDEE DOSS and another.

The prisoners were convicted of a riotous attack with murder.

CRIME CHARGED.—1st count, wilful murder of Mohun; 2nd count, affray attended with the murder of Mohun and wounding of Gengar and others; 3rd count, aiding and abetting in the offences charged in the two abovementioned charges.

Committing Officer.—Mr. W. L. Robinson, officiating magistrate of Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 16th October, 1856.

Remarks by the sessions judge.—The particulars of this case, as given by my predecessor, and the orders passed by the Nizamut Adawlut, on the reference made, will be found in Volume VI. No. II. Nizamut Reports, 6th February, 1856.

The cause of the affray was an old quarrel between Juggunnath Sircar and Wookeel Chunder Surmah regarding some lands which Mohun (deceased) and others held under the Adhyaree system from Wookeel Chunder.

On the 24th October, 1855, Juggunnath, with several of his friends and relatives, among whom were the prisoners now under trial, drove their cattle into the standing crops on the land forming the subject of dispute, and on deceased and others remonstrating, Juggunnath struck Mohun (deceased) a blow on the head with a heavy *lattee*, and some more when he was down, killing him on the spot.

Juggunnath was convicted of murder and sentenced to transportation for life. Byragee was convicted of aiding and abetting in a riotous attack attended with murder and sentenced to fourteen years in banishment.

The prisoners, now under trial, were not apprehended till 30th April. They are clearly proved to have taken an active part in the riotous attack in which Mohun was murdered.

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Case of BUNDEE DOSS and another.

Bundee prisoner No. 1, pleads that he was at home sick on the day of the affray. His two witnesses on this point are not in attendance, but they gave evidence in the foujdary court, which was not believed, and the new witnesses summoned at his request, after his commitment, are Wookeel Surmah, his wife and sons. Wookeel and one of his sons, a lad of about eleven, however, appeared, and Wookeel's evidence tends strongly to shew that his defence is false, and that he was one of the rioters.

Nundodoolal pleads that he was at Borobaree Hat, on the day in question; four witnesses were examined in the foujdary, of these one only has appeared in this court. His evidence differs materially, however, from that given by him before the magistrate, and no reliance can be placed upon it. He had three brahmins summoned to give evidence for him before this court. One of these is in attendance, but he declines to examine him.

Futwa of the law officer and opinion of the sessions judge.— The law officer finds the prisoners guilty on the 2nd count, and in this finding I concur, but the affray in which they were concerned having been attended with murder, I am not competent to dispose finally of the case myself. The case must therefore be referred for the orders of the superior Court.

Recommendation of the sessions judge.— I beg to recommend a sentence of fourteen years in banishment as passed upon Byragee.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoners have been named from the first and there is abundant proof on the record to show that they were present at, and took part in, the attack in which Mohun was killed. Convicting them of aiding and abetting in a riotous attack attended with murder, we sentence them to fourteen years' imprisonment in banishment.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND KOWLASUR ROY

versus

SEEREE AHEER.

Shahabad.

1856.

November 21.

Case of SEEREE AHEER.

The prisoner was convicted on evidence irrespective of the darogah's report which was held to be of no avail against him.

CRIME CHARGED.—1st count, theft of ten buffaloes, valued at 100 Rs.; 2nd count, beating Kowlasur Roy, plaintiff, in which assault, his arm was broken.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. F. B. Drummond, magistrate of Shahabad.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 19th July, 1856.

Remarks by the officiating sessions judge.—The circumstances of this case were detailed in the abstract statement for the month of December, 1843, as follows:—

"On the night of the 30th September last, corresponding with the 22nd Assin, 1251, F., the prosecutor, while sleeping in his cattle-shed, was attacked by a number of persons, who beat him severely (fracturing his arm besides inflicting other injuries) and drove off ten of his buffaloes. Three individuals, who were sleeping near the spot, being roused by the noise, witnessed the outrage, and recognized distinctly the prisoners present others at large. Four of the prosecutor's friends pursued the party and succeeded in recovering eight of the animals."

After an interval of twelve years and upwards the prisoner has been apprehended; the prosecutor and witnesses Nos. 1 and 2, recognize him as actively concerned in the theft and assault.

Witness No. 3, recognized him in the magistrate's court, but has been prevented by illness from giving his evidence before me. The prisoner having denied being Seeree Aheer, the son of Bhola, and stating that his name was Sheonarain, son of Bhora. I directed further enquiries to be made by the magistrate on this point and postponed the case. The result of these enquiries has now been received and is unfavorable to the defence set up. Two witnesses named by the prisoner support his statement, but as no reason of any kind is given for the prosecutor and his witnesses falsely accusing this man, I can see no reason for differing with the law officer, whose *futwa* convicts him of the charge, and I accordingly sentence him to the same punishment as was inflicted on the prisoners who have already been convicted, viz., five years' imprisonment with labor in irons.

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Case of SEEREE AHEER.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The main question in this case is as to the identity of the prisoner, and as regards it, we place more confidence in the evidence for the prosecution than in that for the defence. We observe, however, that the officiating sessions judge, when he directed a mofussil enquiry, should not have been satisfied with the darogah's report, but have required the witnesses, whom that officer examined, to be sent to give their evidence in the sessions court. As it is, the darogah's report can be of no avail against the prisoner. Seeing no reason to disbelieve the evidence for the prosecution, we uphold the sentence passed upon the prisoner and reject his appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT AND MEHER SHEIKH
versus
CHAND KAZEE.

Nuddea.

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Case of CHAND KAZEE.

The prisoner was convicted of rape.

CRIME CHARGED.—Rape on the person of Tamez Mussulmanee, witness No. 1, and wife of Meher Sheikh, prosecutor.

Committing Officer.—Mr. A. J. Elliot, magistrate of Nuddea.

Tried before Mr. R. M. Skinner, officiating sessions judge of Nuddea, on the 31st October, 1856.

Remarks by the officiating sessions judge.—On the 25th August, Tamez Mussulmanee, witness No. 1, a girl about twelve years of age, went to the thannah and deposed before the darogah; and her evidence before the magistrate and the judge, is to like effect; that, on the evening of the 23rd, she, taking with her a little boy, named Phooneh, was in search of a chicken belonging to her employer, witness No. 9, which had been carried off by a jackal; when the prisoner met her and persuaded her that he had seen the jackal carry the chicken into some thatching grass, and would catch it if she went with him. On arrival at the spot the prisoner having pushed the little boy by the neck and driven him away, dragged deponent into the grass; she cried aloud, but he stripped off her clothes and committed a rape upon her. Her mother was attracted to the spot by her cries; and the prisoner left her and ran away; after which neighbours who had heard her shrieks came up; at the advice of the villagers she went to complain next day at the pharee, but the phareedar was absent. On the following day she went to the thannah. On the 26th, her husband petitioned,

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and the darogah made local enquiries. The prisoner was sent in on 1st September.

Phooneh, witness No. 10, is a little boy of about five years of age, who told his mother, in the magistrate's presence, that the prisoner took the girl, witness No. 1, into the grass, and that he heard her cries, but this boy seemed unable to give evidence to the magistrate (vide *roobakaree* of 4th September.) His mother, witness No. 7, Tara Mussulmanee, declares that he is so ill that he cannot appear at the sessions. She deposes that on the evening in question her boy came home and said the prisoner had taken Tamez into the grass and was beating her. Burkutoollah Sheikh, witness No. 6, saw prisoner drag the girl by the hand into the grass and drive the little boy away. The girl's mother Reshum Mussulmanee, witness No. 2, came up in time to see prisoner in the act. Asmuttoollah, witness No. 8, testifies that Reshum, witness No. 2, informed him of this the same evening, and he advised him to complain at the thannah. It also appears from the evidence before the magistrate and here that Ghyrutoollah, witness No. 9, heard of the act from the little girl on his return from fishing. The testimony of the assistant surgeon, witness No. 5, shews that violence was committed on the person of the girl, witness No. 1.

The prisoner's answers in the mofussil, foujdary and sessions vary. His attempt to prove an *alibi* fails. Even his own witnesses shew that he was not far off, although they do not agree as to the distance at which he was from the spot at the time in question.

The verdict of the jury is "*guilty*."

In this I concur, and would recommend that Chand Kazee be imprisoned for seven years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to doubt the guilt of the prisoner. The medical evidence proves that the girl was violated, and the witnesses depose to the prisoner being the ravisher. No reason is assigned for the charge being falsely preferred, except, that in the sessions court, there is allegation of a debt to the prisoner by the mother of the girl, which was not made before the magistrate. The presumption therefore is that it is untrue. We convict the prisoner of rape and sentence him as proposed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GIRDHAREE SINGH

versus

DOOLEE DHAREE.

Bhaugulpore. 1856. November 21. Case of DOOLEE DHAREE. Conviction of burglary affirmed.

CRIME CHARGED.—1st count, burglary and theft of property valued at Rupees 29-4; 2nd count burglary with attempt at theft.

CRIME ESTABLISHED.—The 2nd count of crime charged.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 8th August, 1856.

Remarks by the officiating sessions judge.—This case was tried with the aid of a jury* at Monghyr on the 8th August, 1856.

* Nath Suhoy.
Beneepershad.
Hurrechurpershad.

The prisoner pleaded guilty to having gone with intent to steal, but the burglary was committed by others.

Prosecutor was sleeping in the eastern compartment of his house, when he heard a noise about midnight, he listened for a short time, and thought it was a goat, again he heard a noise, and suspected that a thief had entered the house, it being dark he groped about, when both his hands came in contact with the prisoner's head, he seized him by the hair, when prisoner struck him a blow under the eye, and prosecutor called out for assistance, but the thief then held him by the throat to prevent his giving the alarm, the prisoner then put his feet through the hole he had made, and told his accomplices to draw him out which they did, the prosecutor retained hold of the culprit and was drawn out with him, there was a struggle outside, when the thief was getting the better of him, he again told his companions to strike prosecutor with a *lattee,* this they endeavoured to do, but prosecutor being below, the blows were received by the prisoner. At this period witnesses Nos. 1, 2 and 3, hearing the prosecutor's cries, came to his assistance, and found him wrestling on the ground with the prisoner, they apprehended and made him over to the chowkeedar, and a "*send kattee*" was found on the spot, he was eventually made over to the police, where he confessed to having gone to mouzah Ramdiaree with others to steal, the burglary was not quite effected, but the prosecutor apprehended him while in the act of perpetrating the deed. This statement is false, for prosecutor declares that

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a *petarah* containing articles valued 29 Rs. 4 as. were found missing, which doubtless was carried off by the prisoner's associates, who unfortunately were not apprehended nor identified, it being a dark night. Witnesses Nos. 1, 2 and 3, depose to having heard prosecutor give the alarm, they went to his assistance, and found the prisoner and the prosecutor on the ground, the former trying to make his escape, they apprehended and made him over to the chowkeedar.

Witnesses Ramlaul and Budhu Sahoo, depose to prisoner's confession being voluntary before police, and Mullick Pultoo and Bodhee to that taken before the magistrate.

Jhaloo Singh and Khoobee were present when the *sooruthal* was prepared.

The prisoner, in his defence before this court, admits that he went to the prosecutor's house with the intent to steal, he was caught in the act of effecting a burglary when prosecutor apprehended him, he did not steal any thing, and states that he went alone, and the "*send kattee*" found belongs to him, he was imprisoned in the Monghyr jail for three years for the same offence and four years have elapsed since he was released, and from that date he has been occupied as a "Gorait" to watch the ryot's crops.

The jury return a verdict of guilty on the second count, in which I agreed, and as the prisoner, by a return from the magistrate's office, was proved to be an old offender, I considered him deserving of severe punishment and sentenced him accordingly.

Sentence passed by the lower court.—Seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner confessed even in the sessions to having been caught in the very act of committing the burglary, although he had not succeeded in getting any property. Under these circumstances his conviction is proper and we reject his appeal.

PRESENT:

B. J. COLVIN AND J H. PATTON, ESQS., *Judges.*

GOVERNMENT AND GHOWLEE KAHARIN AND ANOTHER *versus* SHEOSHUNKER SINGH.

Behar.

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Case of SHEOSHUNKER SINGH.

The prisoner convicted of being an accomplice in murder was sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Bhowla Kabar, deceased.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 24th September, 1856.

Remarks by the sessions judge.—This trial is supplementary to that decided by the Nizamut Adawlut, on 31st January, 1855. Page 131 of printed decisions.

Musst. Ghowlee and Tetree, prosecutrixes.
Wt. No. 1, Tetoo Kahar.
" " 2, Mohun Kahar.
" " 3, Panchoo do.
" " 4, Nunhuk do.
" " 5, Mittoo Possee.
" " 6, Lallkishen Kahar.
" " 25, Barhoo Kahar.

Adit Singh (still absconded) required a fourth Kahar, or bearer to convey a female of his family some distance across the Ganges, he had engaged the deceased, and on the morning of the 9th May last, called and told the deceased he was to leave that day. The deceased objected, as his brotherhood were all there assembled to witness Mohun Kahar's (witness No. 2's) marriage ceremony, preparations for which were then actually going on in the premises, but said that he would be ready to go the next day. On this, Adit Singh left, but towards night returned with the two previously convicted, Burt Singh and Bhown Singh, the prisoner Sheoshunker Singh and two others still absconded, besides others all armed with *lattees* or clubs, and seizing the deceased were carrying him off, when on his struggling, they so unmercifully beat him, that they left him senseless on the spot, in which state he continued until released by death before morning.

The place is a small hamlet, inhabited by Kahars and one Passee Mitto, witness No. 5. I find the crime of a very premeditated character, for Adit Singh's return after the deceased's repeated refusals to go whilst engaged as he was that day, and not until the following one, accompanied by so many armed Rajpoot adherents, has something more significant in it, than that of obliging a single helpless Kahar, or indeed a whole body of Kahars to perform certain work. It bespeaks studied revenge at a menial's repeated opposition, quite consonant with the overbearing tyrannical bearing of Rajpoots generally towards

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those beneath them, and the miserable results witness for themselves. The presumption is strong that the crime amounts to wilful murder, for the *lattee* in native hands is just as lethal a weapon as any other, and there was nothing exculpatory in what had taken to excuse its having been used in the brutal manner it was. From the nature of the blows on the body also, as so soon causing death in an able-bodied man like the deceased, death cannot be assigned to one fatal blow, but to maltreatment generally by repeated violent blows, thus singularly supporting the medical officer's opinion given under every disadvantage, that the deceased had met with a violent death.

Wt. No. 1, Tittoo Kahar.
" " 3, Nunhuk Ditto.
" " 4, Lallkishoon Ditto.
" " 5, Barhoo Ditto.

The same eye-witnesses now depose to their recognition of the prisoner as one of the deceased's assailants named by them in the former trial as Sheoshunker Singh the son of Keywul Singh, who died as a convict in the jail of this district.

The prisoner, having hitherto evaded apprehension, was at last, on 17th July last, captured at Sheomundun, where the murder took place. Before the police he gave his name as Sheoshunker *alias* Sheochurn of Sheomundun, Keywul Singh's son. Before the magistrate he called himself Ramchurn son of Ramruthun, a resident of Chunder, zillah Patna, and he adhered to the same personation before this court, where he pretended that the real Sheoshunker was his father's sister's son, and had absconded since the murder. He set up no other particular defence. He called witnesses in support of such personation. Three before the magistrate, residents of different and distant places, who denied any acquaintanceship with him, and six before the sessions court, two of whom were residents of Sheomundun and one of Chunder. The latter did not know him, and one of the former Khurrugdaree (witness No. 12,) pretended ignorance as residing elsewhere, but the other Beharee Pandey (witness No. 13,) recognized him at once as Sheoshunker Keywul Singh's son, and deposed to particulars regarding the family, which, in every respect, corroborated those deposed to by the prosecution.

Fuzzul Imam of Bethoo, zillah Behar.
Sheikh Mozuffer Hossein of Bilchee, Ditto.
Muhadeo Singh of Toongree, Ditto.
Beharee Misser of Chakan, Ditto.

The jury unanimously convict the prisoner on the count charged.

The defence arising out of the personation, as already shewn, is palpably false, according to the prisoner's own witnesses, and tends to strengthen the prosecution. Had there been a word of truth in this defence, the prisoner could have had no difficulty in proving it, whereas the very witnesses called by him expose its fictitiousness. In continuation of my

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original finding, therefore, it only remains for me to convict the prisoner as an accomplice in the wilful murder of the deceased, and to recommend a like sentence of imprisonment for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We concur with the sessions judge in convicting the prisoner of being an accomplice in the murder of Bhola, on the evidence for the prosecution, in which he was named from the very first. We notice also that his defence is disproved by his own witnesses. We sentence the prisoner to transportation for life.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MUSST. PUKERRI

versus

KALMOOA RABBA (No. 1,) AGHUNNA RABBA (No. 2,) AND PADHA RABBA (No. 3.)

Assam. 1856. November 26. Case of KALMOOA RABBA and others.

In concurrence with the deputy commissioner, prisoners convicted as principal and accomplices in wilful murder, and under the circumstances sentenced to term-imprisonments.

CRIME CHARGED.—Wilful murder of Hurri Rabba.

Committing Officer.—Lieut. B. W. D. Morton, officiating magistrate of Durrung.

Tried before Major Hamilton Vetch, deputy commissioner of Assam, on the 25th September, 1856.

Remarks by the deputy commissioner.—The crime with which the prisoners stand charged and stated to have been perpetrated in April, 1855, was first brought to the notice of the magisterial authorities in July, 1856, through an anonymous accusation in writing found in the petition-box, thereon the police darogah was directed to proceed to the spot and make enquiry; from his report, and several subsequent investigations it appears that the deceased was the cousin of the prisoner, Kalmooa No. 1, who again is the uncle of the prisoner, Aghunna No. 2, and the father of the prisoner, Padha No. 3; that they all resided in the same compound, or homestead, but that the deceased and Musst. Pukerri, his wife, occupied a separate house, and we learn from her deposition that her late husband had been previously in good health; and that he, and the prisoner, Kalmooa No. 1, had a joint-interest in a dam constructed for the purpose of catching-fish, and that on the early part of the day on which deceased came by his death, they had had a quarrel about his taking more than his share of the fish, which ended in a scuffle; at this time, the prisoners Nos. 2 and 3, were from home, but on their return in the afternoon, they all three came and entered

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the house of the deceased, who was asleep there. No. 3 Padha, struck him on the head with a bamboo *choongah* and afterwards with the wooden pestle produced in court, whilst Nos. 1 and 2, assaulted the deceased with their fists, and by kicking him; that it was the blows given by prisoner No. 3, which aroused the deceased from his sleep, when he asked why he was being beaten, and it was likewise the blows inflicted by the same prisoner, which deprived him of life; that she was present when this took place, and called for help, when Boddia Rabba, the only other eye-witness (but who has left the neighbourhood and is not to be found) came and forbid them, but they would not listen to him and continued the assault; after it was over, they placed deceased in the house and went away, but returned again at night and kept watch in case deceased should revive; they next morning took the corpse and buried it in the jungle. Deponent's only son, a lad, was absent on a visit to his relations and did not return till the following day after the interment; that Padha No. 3, brought the bamboo *choongah* with which he first struck the deceased, and it was when it broke, that he took up the pestle, which he found in the house; that there are no immediate neighbours, those who reside nearest had gone to different places to drink; that after her husband's death, she gave information to Jopohoo, Toopa and Kobeer, neighbours, and they saw the corpse, and, five days later, when the Patgheeree came to the mouzah she told him what had happened, when he said, Your complaining will not restore your husband, go home, and if the matter come to be enquired into, that he would be answerable: that this conversation took place in presence of Jopohoo; that the prisoners told her to say that her husband had died of cholera, and threatened to beat and kill her if she informed against them; says, she stated before the foujdary that she had told the Patgheeree and cannot say why it has not been so recorded; says there was no ill-will between the prisoners and the deceased, although they occasionally had wordy quarrels, that it was in the hope that the deceased might revive that the prisoners kept watch during the night, and finding he did not, buried him. From her deposition before the police and joint-magistrate, it would appear that the fatal blow had been given outside of the house, but of this, no mention is made before the jury.

All the prisoners plead not guilty to the charge.

The prisoner Kalmooa No. 1, before the police admitted that he had had a quarrel with the deceased, and that a scuffle followed, and alleges that the deceased struck him with a stick, and that here the matter ended for the time, but when the prisoners Nos. 2 and 3, his nephew and son, returned, they assaulted and killed the deceased inside the house, and that he, prisoner, was outside. That the corpse was buried the following morning, and that it

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was given out, that deceased had died of cholera. Before the joint-magistrate, he confessed that he and the deceased had quarrelled as stated above, and that when Aghunna No. 2, and Padha No. 3, came home, they all three went to the deceased's; that Aghunna No. 2, commenced the assault followed by Padha No. 3, and that he was the last to take part in it; that Padha No. 3, struck and killed the deceased with a piece of bamboo, a cubit long; that they kept watch over the corpse and buried it in the jungle the following morning, two villagers being present, says that no information was given to the Patgheeree or police, and pleaded that there was no intention to take the life of the deceased.

The prisoner, Aghunna No. 2, before the police, at first denied his having beaten the deceased, but admitted that in consequence of a quarrel between him and Kalmooa No. 1, about the fish taken in a dam, they had had a fight, at which time he No. 2, (prisoner) and Padha No. 3, were absent, and on their return Kalmooa No. 1, and Padha No. 3, went into the house of the deceased, whom they severely beat, and on Kalmooa No. 1, abusing him No. 2, (prisoner) he went and laid hold of deceased's hand, when the others beat, killed, and dragged him outside, where he expired; here admits that he did strike deceased with his fist; that that day the corpse remained in the house, next morning all three united in burying it in the jungle. Before the joint-magistrate, he adverts to the original cause of quarrel between No. 1, and the deceased as above, confesses that he beat the deceased, but that his death was not caused thereby; and that it was the beating inflicted by Nos. 1 and 3, which proved fatal; that he did not see him killed, but heard that he was killed by Padha No. 3; admits that he assisted at the burial of the deceased.

Prisoner No. 3, Padha, before the police confessed to having beat and killed the deceased; describes the quarrel to have originated between his father No. 1, and the deceased about the fish caught in a dam, at which time he, No. 3, and Aghunna No. 2, were absent, but hearing of it on their return, all three went and beat and killed the deceased, and that he died from the effects of a blow he (Padha No. 3,) struck him on the neck with a bamboo *choongah;* that the corpse was kept in the house that night, and thence they three took and buried it in the jungle; that they all conjointly beat the deceased, but that it was the blow he No. 3, (prisoner) struck, which killed him; denies that he ever struck the deceased with the pestle produced by the prosecutrix, and states that the *choongah* with which he did strike was about a cubit long—cannot say what has become of it.

Before the magistrate, he again confessed, alleging that Aghunna No. 2, was the first to assault the deceased.

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Witnesses for prosecution.
Bhaheria *alias* Jonkoo.
Bhokot Boora.
Toopa Rabba.
Kubeer Rabba.

Four witnesses depose that they were called by the prosecutrix who showed them her husband's corpse, and were told by her that the deceased had been beaten by the prisoners, who had struck him with their fists and stick and kicked him, and that he had died therefrom; on examining the body, they saw a swelling over the eye, and the mark of a blow near the ear, that blood flowed from the nose; further that they had heard the prisoners had next day buried the corpse; that the deceased had not been previously ill, nor was there any previous ill-will between him and the prisoners. They, witnesses, were present and heard the confessions made by the prisoners before the police as recorded; also depose to the prosecutrix having given information to the Patgheeree. None of them saw the bamboo *choongah* alleged to have been used in the conflict, but recognize the pestle as that delivered by the prosecutrix to the police. Witness Toopa adds that a watery-fluid came from the mouth of the deceased, Witness, Bhokot, further deposes that the skin was broken on the private parts, and that when the prisoners were questioned the following day by himself and Toopa, they confessed.

Witness, Boorihana.

Witness, Boorihana, further deposes he was present when the prisoners were apprehended.

Witness, Juppoohoo.

Witness, Juppoohoo, deposes that prosecutrix told him that her husband had been killed by the prisoners, and shewed him the corpse, that there was blood coming from near the right ear; that deceased had not been previously ill, or on bad terms with the prisoners; heard that prosecutrix had informed the Patgheeree, village-writer and chowkeedar; was present when prisoners Nos. 1 and 2, were apprehended; heard the prisoners make their confessions before the foujdary court.

Witness, Kubeer Rabba.

Kubeer Rabba, witness, heard the prosecutrix wailing for the death of her husband, she said the prisoners had beaten him, and that it was No. 3, Padha, who struck the fatal blow; saw the corpse but did not go near; observed a swelling over the left eye, the deceased had not been ill previously, nor on bad terms with the prisoners.

Witness, Damoo Rabba.

Damoo Rabba (this witness being a lad, the son of deceased, and not knowing the nature of an oath, was not sworn, but admonished to speak the truth) stated that he was absent on a visit to a relation, and on his return next day, heard from his mother that his father had been beaten, and killed by the prisoners; that

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No. 3, had struck deceased with a bamboo *choongah* which broke; that he had then taken the pestle, and with it struck and killed his father; that the prisoners had buried the corpse before he came home. Further, that information had been given to the Patgheeree.

Witness, Sangpatta.

Sangpatta, witness, deposes to having been shown the corpse of the deceased by the prosecutrix, and that there was blood coming from the mouth and nose, had a swollen mark near the right ear; that he advised prosecutrix to inform the Patgheeree, the deceased had not previously been ill, nor did ill-will exist between him and the prisoners.

Defence.—No. 1, Kalmooa, in his defence says that he and the deceased had a quarrel about some revenue matter, and also fish taken in a dam; that his son, Padha No. 3, hearing that he had been beaten, took with him Aghunna No. 2; that he found them all quarrelling and interfered; that he struck at both sides, that he only struck deceased with his hands; but that it was not by his blows that deceased came by his death, it was a blow from a bamboo *choongah* given by Padha No. 3, and blows given by Aghunna No. 2, that killed the deceased; that whilst deceased was still alive he had him removed inside his house, and that three neighbours came and gave him some water, soon after which he expired; next day he, with the neighbours, buried the corpse in the jungle.

No. 2, Aghunna, states, in his defence, that he had been indulging in liquor and, on coming home, hearing a row at Hurris, went there and found Hurri and Padha No. 3, fighting; that he separated them and came away; that he did not kill the deceased, who died from the beating he got from Padha No. 3, and he was not present when he died.

No. 3, Padha in his defence says he was intoxicated and that Hurri (deceased) was in the same state, he went and asked deceased why he had beaten his (prisoner's) father, that they had a fight and soon after the deceased expired, but that he (prisoner) had no intention of taking his life.

No witnesses were called by any of the prisoners in their defence.

Verdict of jury.—The jury give a verdict of culpable homicide against the prisoner No. 3, Padha, and against Nos. 1 and 2, Kalmooa and Aghunna, of aiding and abetting in the crime; the magistrate concurred with the jury and did not consider that the blow was intentional and proposes that No. 3, Padha, be sentenced to seven years' imprisonment with labor and irons, and Nos. 1 and 2, each to one year's imprisonment.

Opinion of the deputy commissioner.—From what has been elucidated in the course of the trial, it appears that the prisoner, Kalmooa, quarrelled with the deceased for not giving him his

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share of fish taken in a dam, and that a scuffle or fight ensued, after which the deceased retired to his house, and on the afternoon of that day, Aghunna, No. 2, the nephew, and Padha No. 3, the son of Kalmooa, No. 1, came home and went with him to the house of the deceased who, it appears, was asleep when they entered, and all three assailed him, Nos. 1 and 2, with blows and kicks, No. 3, with (he admits) a bamboo *choongah* with which he struck him about the head, and under these inflictions the deceased expired; that they gave out that deceased had died of cholera, and next morning buried the corpse in some jungle hard by; all this is fully admitted by the prisoners in their confessions, Padha No. 3, frankly confessing that the blow, which killed the deceased, was struck by him; but beyond this, the widow of the deceased had produced a pestle (used for husking paddy) made of very hard and heavy wood, measuring two feet in length and weighing seventy-five *tolas* tapering in form, and when held by the small end forms so murderous a weapon, that a blow with it delivered, with any considerable force on the part of the head of the deceased described to have been injured, must, in my opinion, have been followed by a fatal termination, and she deposed that it was with this weapon that Padha No. 3, after breaking the bamboo *choongah*, inflicted the fatal blows, this result adds weight to her testimony, which, I think, should be received, notwithstanding his very frank and straightforward confession, that he dealt the blow, which killed the deceased with a bamboo *choongah;* and whilst the circumstance of the pestle having been obtained on the spot, shows, that he made use of it without premeditation, still the infliction of the fatal blow with such an instrument in so aggravated and premeditated an assault, where no resistance was made, constrains me to differ from the verdict given by the jury, and committing magistrate; and convict the prisoner No. 3, Padha of the murder of Hurri, and Kalmooa, No. 1, and Aghunna, No. 2, of being accomplices in the crime; at the same time, I am of opinion that the near relationship of the parties, as well as the circumstances under which the assault commenced, render it highly improbable that it was made with the premeditated intent to murder the deceased, and taking this and the excitement of the young man at hearing his father's relation of the treatment he had received from the deceased, and that it is not improbable that he was under the effects of liquor, it having occurred during the saturnalia, which prevails throughout the province at the Beehoo festival, I would recommend that the prisoner Padha No. 3, be sentenced to transportation for life with labor and irons; that the prisoner No. 1, Kalmooa, who, although he did not strike the fatal blow, appears to me little less culpable than his son, be sentenced to fourteen years' imprisonment with labor and irons in banish-

ment. The prisoner No. 2, Aghunna, accompanied his uncle and cousin, appears to me the least culpable, I would recommend that he be sentenced to five years' imprisonment with labor and irons.

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I accordingly refer the case for the orders of the Sudder Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The confessions of the prisoners leave no doubt of their complicity in the death of the deceased. We concur with the deputy commissioner in considering the crime amounts to wilful murder; and adverting to the circumstances as detailed by that officer's summary of the evidence recorded, we sentence the prisoners as proposed by him, viz. Padha Rabba, by whose hand the blows were struck which caused death, to transportation for life, Kalmooa to fourteen years' imprisonment with labor and irons in banishment, and Aghunna to five years' imprisonment with labor in irons; these two last as accomplices in the crime.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

TRIAL NO. 2.

GOVERNMENT AND CHEENEEBAS SAHA

versus

ILLUM SHEIKH.

TRIAL NO. 3.

GOVERNMENT AND JEETUN SIRCAR

versus

ILLUM SHEIKH.

Moorshedabad 1856. November 26. Case of ILLUM SHEIKH. Appeal rejected.

CRIME CHARGED.—*Trial No.* 2.—Dacoity in the house of the prosecutor, Cheeneebas Saha, in which property to the value of Rs. 12-7 was plundered.

Trial No. 3.—Dacoity in the house of the prosecutor, Jeetun Sircar, in which property to the value of Rs. 26-6-6 was plundered.

CRIME ESTABLISHED.—*Trial No.* 2.—Dacoity with robbery in the house of Cheeneebas Saha.

Trial No. 3.—Dacoity with robbery in the house of Jeetun Sircar.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

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Case of ILLUM SHEIKH.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 19th August, 1856.

Remarks by the officiating sessions judge—Trials Nos. 2 and 3.—This prisoner was committed with prisoner No. 7, Anund* Mundul in statement No. 8. He is implicated in two offences and is the same as prisoner No. 8, in this statement.

A gang of dacoits attacked the house of Cheeneebas, on the night of the 28th June, and after robbing him of property valued at 12-7, they committed another dacoity in the house of Jeetun Sircar in another part of the village, and robbed him of property valued at 26-6-6. These two cases were therefore tried separately, one after the other.

No trace of any of the dacoits was at first discovered, but on the 2nd July, Jeetun in a supplemental deposition before the darogah said, he suspected prisoner No. 7, Anund Mundul, as he heard he was absent on the night of the dacoity; on his being apprehended he denied having committed these dacoities, and said that he and No. 6, Illum Sheikh, were in the house of Horo Sircar that night; on this No. 6, Illum Sheikh was apprehended and confessed before the darogah, and again before the magistrate that he had been concerned in both these dacoities.

In this court he denies having made any confession before the magistrate, and says he was beaten and was induced by a promise of 50 Rs. to confess before the darogah; as, however, his two confessions are clearly proved, and shewn to have been given voluntarily and he again before the magistrate eleven days after his confession voluntarily pointed out the prisoner No. 7, Anund Mundul, as the person who accompanied him, I consider both cases proved upon him, and therefore convicting him of having committed dacoity with robbery in the houses of Cheeneebas and of Jeetun, I sentence him in the two cases to a consolidated sentence of imprisonment for fourteen years with hard labor in irons in banishment, and a fine of Rs. 38-13-6, under Act XVI. of 1850, viz. Rs. 12-7 for calendar No. 5, and Rs. 26-6-6 for calendar No. 6.

These cases were tried by me under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Excepting evidence as to the occurrence of the dacoities, there is nothing against the prisoner but his own confession. In the sessions court, and his appeal here, he declares that that confession was extorted from him by threats and promises. We find, however, that the prisoner not only confessed before the darogah, on the 4th July, but again before the magistrate on the following day: and again on the 16th idem, in confirmation of his former statement, he pointed out

* Acquitted by the lower court.

Anund Mundul to the magistrate, who had, according to his account, instigated him to commit the crime. It is not probable that the prisoner would have held to his confessions so long had they not been voluntarily given. We must therefore consider them credible and trustworthy and sufficient for his conviction. Appeal rejected.

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Case of ILLUM SHEIKH.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

SHADOOLLAH NUSIO (No. 5,) AND BHOOCHOO NUSIO (No. 6.)

Rungpore.

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Case of SADOOLLAH NUSIO and another.

Under the circumstances, prisoners convicted of assault, &c. rather, than homicide, of a female advanced in pregnancy.

CRIME CHARGED.—1st count, culpable homicide of Musst. Nyzadee; 2nd count, having assaulted and otherwise ill-treated Musst. Nyzadee, deceased.

Committing Officer.—Mr. A. G. Macdonald, officiating magistrate of Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 15th October, 1856.

Remarks by the sessions judge.—From the evidence, it would appear that the prisoners suspected the deceased (widow of a brother of prisoner No. 6, Bhoochoo Nusio, who died in the month of Choit last,) of having made away with a cloth, and in order to force her to give it up or say what had become of it, Sadoollah No. 5, by Bhoochoo's order seized and bound her two hands together, and then to one of the house posts. She was seen in this state bound by witnesses, No. 7, Jentee Bewah, (deceased), Rutun Bewah No. 8, and Shoorpa Bewah No. 9; at about midnight on Tuesday night, the 15th April, Tonoy Pramanick, witness No. 5, saw her trying to effect her escape from the prisoners, who were abusing her for having lost the cloth, and saw Sadoollah seize her, tie her hands, and drag her into the house. After the above named three female witnesses Nos. 7, 8 and 9, left her, she was not seen alive by any of the villagers. The next morning the prisoners gave out that she had died during the night, and wanted to bury her, but the villagers refused, seeing marks of violence upon the body. Information was laid at the thannah by the chowkeedar of the village the follow-

No. 8, Rutun Bewah.
„ 9, Shoorpa Bewah.

No. 5, Tonoy Pramanick.

No. 1, Gheena.
„ 2, Khodabux.
„ 4, Firingee.
„ 6, Pear.

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ing day, and the darogah arrived on the morning of the 17th. He found marks on both wrists such as would be caused by a rope tightly tied round them, a mark on the left side black and risen, such a mark as would probably be caused by a push or thrust from a stick, on the lower part of the leg below the knee, marks as of pounding. The arm below the elbow much swollen, as if from blows, and above swollen and depressed in parts, presenting the appearance that an arm the bone of which has been broken would shew, there were other marks, but these are the chief and most distinctly marked. The deceased was far gone with child, the witnesses say eight months. On the wrists were found bracelets, but the marks on the wrist were above and distinct from the marks made by these.

When the body arrived at the station, it was too far decomposed for examination, but as the prisoners asserted that deceased had died from the effects of disease I called upon the native doctor of the charitable hospital of this station, (as more likely to have had practical experience in cases of pregnancy among natives than the civil assistant surgeon) for his professional opinion as to whether any of the marks found on the body could be attributed to disease. He was of opinion that the swollen state of the body might be the effect of disease, but that the other appearances could not. It would appear from the evidence that deceased was suffering from swelling of different parts of the body, not an uncommon affliction in cases of pregnancy. Admitting therefore that the arm or other parts of the body were swollen from natural causes, there would still remain other marks to be accounted for. The prisoners urge that the mark on the wrists was caused by the tightness of the bracelets, but it would appear that there were distinct marks above, where the bracelets were worn, and the well-defined mark on the left side, which is described by the witnesses as being below the waist the most likely of all to have caused the death of a woman so far advanced in pregnancy, is left totally unaccounted for.

Tussaudukh Hossain, Native doctor, Charity Dispensary.

Defendants plead *not guilty* and assert that the witnesses have borne testimony against them out of enmity, and that the deceased died a natural death, but have adduced no evidence in support of their plea of enmity, or that deceased's death was natural. The witnesses they desired to call after the commitment were in attendance, but they refused to examine them. There is no reason that I can see, to suppose the witnesses have deposed falsely or exaggerated, it is more probable that they have concealed a part of what they knew. Unless the police colluded with the villagers to get up a false case against the prisoners, which does not appear probable, and which is not even urged, the case can hardly be a false one. The prisoner, Boochoo,

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in his defence before the magistrate, admitted that a cloth had been lost, but stated this was two or three days before the death of deceased, and that it was found in the house and that the loss of it gave rise to no quarrel.

Futwa of the law officer.—The law officer finds the prisoners guilty on the second count only, and declares them liable to *tazeer* at the discretion of the court.

Opinion of the sessions judge.—But finding with the law officer the second count proved, I am of opinion that the fact of the assault and ill-treatment of the deceased at the hands of Shadoollah, prisoner No. 5, at the instigation of prisoner Bhoochoo No. 6, as proved by direct evidence, taken into consideration together with the fact also proved of her death, in the prisoner's own house, on the night on which the assault took place, which has not been satisfactorily accounted for; and the state of the body, when the prisoners desired to take it out for burial the following morning, which shewed marks not to be accounted for under any other supposition than that of violence of some kind or another, affords a sufficient legal presumption that deceased's death was caused by violence, and that the prisoners are the parties by whom such violence was inflicted. I do not see, under the circumstances of the case, that any other conclusion can be come to.

Recommendation of the sessions judge.—I would therefore convict them, on strong presumption on the first count, and sentence them, considering the cruelty of their conduct to a near relation living under their protection, and in the state in which deceased was, and the slight provocation which occasioned such conduct, to imprisonment with labor in irons for fourteen years.

Jentee Bewah, died after the case was committed to the sessions but her deposition before the magistrate, having been proved by the attesting witnesses, has been read and placed on the record of this case.

Sheikh Ataoollah.
Sheikh Fazeel Mahomed.
Madarbux.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The *futwa* convicts the prisoners on the second count, of the charge, viz. of assaulting and ill-treating the deceased, while the sessions judge considers that as the woman was known the next morning to be dead, her death can only be attributed to the ill-usage she received at the hands of the prisoners; and therefore convicts them of culpable homicide. There is, however, no opinion as to the actual cause of death on the record, the body having reached the station in such a state of decomposition that no *post mortem* examination could be held upon it. Its appearance merely exhibited marks of such ill-treatment as the evidence shows the deceased

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was subjected to by the prisoners before her death. There is nothing then beyond grave suspicion to connect the prisoners with the woman's death; and on such suspicion only, it is not possible to convict the prisoners of culpable homicide. The evidence against them, however, fully establishes the fact of ill-treatment. We convict the prisoners of assault and taking into consideration that the woman was at the time far advanced in pregnancy, sentence them to three years' imprisonment with labor commutable to a fine of 50 rupees, payable within one month.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

JEEBUN JOOGEE (No. 1,) KISHTOGOPALL TANTEE (No. 2,) AND MUDDOOSOODUN TANTEE (No. 3.)

East-Burdwan.

1856.

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Case of JEEBUN JOOGEE and others.

Prisoner on appeal acquitted of alleged perjury.

CRIME CHARGED.—Perjury, in having on the 27th June, 1856, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of East-Burdwan, that the *sooruthal* of the dacoity, which was committed in the house of Sohochuri Khanki of Goopipore, thannah Poobthal, was not conducted before them, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 16th September, 1856.

Remarks by the officiating sessions judge.—Certain persons were apprehended on a charge of committing a dacoity in the house of Sohochuri Khanki.

The prisoners in the present trial were sent in as witnesses to the *sooruthal.* They deposed before the magistrate that they had not attested the *sooruthal*, and that they had not been to the house of Sohochuri Khanki.

It has been clearly proved* that the *sooruthal* was made in their presence, and was attested by them.

The prisoners plead in their defence, that they were seized by

* Witness No. 8, darogah of thannah Poobthal.
Witnesses Nos. 1 and 2, attesting witnesses to the *sooruthal.*
Witness No. 3.

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the order of the darogah and were made to sit down at some distance from the house; and that they were compelled to touch a pen in attestation of the *sooruthal;* but they have adduced no proof of these allegations.

The *futwa* convicts the prisoners.

The law officer is of opinion that the talookdar having concealed the occurrence of the dacoity, the prisoners have been induced to give false evidence in consequence.

Believing that the charge is fully established against the prisoners, I sentence them to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We can find nothing on the record to show for what reason the prisoners were examined regarding the *sooruthal;* there was apparently at the time no trial proceeding and consequently no matter in issue before the magistrate, which he was required to decide. The evidence, also, regarding the fact that these prisoners were really present when the premises were examined, is very unsatisfactory. The darogah of police was deputed apparently to the spot to make secret enquiries on this point, and sent in the witnesses, who deposed in support of the prosecution.

We consider the charge of perjury is not established, and direct the release of the prisoners.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

Chittagong.

BISSUMBER BISHWAS.

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Case of BISSUMBER BISHWAS.

A mohurrir in a Government office convicted of embezzlement.

CRIME CHARGED.—1st count, the defendant being the collectorate nazir's buxee at the time, is charged with forgery, viz., in having on the 21st June, 1855, granted a receipt in Ramsoonder Dhur's name, the foujdary nazir's buxee in the collectorate nazir's *chelan* book for the sum of Co.'s Rs. 9-0-10, being the amount of reward-money belonging to the police officers which they ought to have received for rendering assistance in the seizure of contraband or smuggled drugs, and with having fraudulently and intentionally forged or caused to be forged the name of Ramsoonder Dhur, the foujdary court nazir's buxee with a view to shew that he (defendant No. 2,) had actually paid over the sum of Co.'s Rs. 9-0-10, to the said Ramsoonder Dhur, foujdary nazir's buxee; 2nd count, having uttered as genuine the forged receipt in the Abkaree nazir's *sherista,* well knowing it to be forged; 3rd count, the defendant being the collectorate nazir's buxee at the time having received the sum of Co.'s Rs. 9-0-10, from the Abkaree department to make over to the foujdary department as reward-money belonging to the police officers and having granted a receipt for the amount is charged with having never made over the money for the purposes it was received, but appropriated the same to his own purposes and embezzled the amount, or caused the same to be embezzled; 4th count, having stolen or caused to be stolen the above sum of Co.'s Rs. 9-0-10.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, officiating sessions judge of Chittagong, on the 19th September, 1856.

Remarks by the officiating sessions judge.—The witnesses produced in support of the charge were three. Of these, the first* deposes that on the 5th June, 1855, the accused person took from witness the sum of Rs. 9-0-10, to be transmitted to the magistrate's office for distribution among certain police officers on account of gratuities (for assistance rendered to the excise department) and signed his name in an account-book of the Abkaree office in acknowledgment of having received the money, that he has ascertained by subsequent enquiry that a

* No. 1, Ramhurry Sein.

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copy of a proceeding of the Abkaree deputy collector intimating to the magistrate the remittance of the money was delivered to the accused, by the mohafez of the Abkaree office, for despatch to the magistrate's office and a receipt for the same taken from the accused; that in March, 1856, it was discovered that the money in question had not been sent to the magistrate's office, and that witness consequently supposes that the accused person has embezzled the same. This witness admits that the accused person, who is a buxee employed by the nazir of the collectorate, is in the habit of sending money entrusted to him for transmission to the magistrate's office, which is situated in the same building as the collector and Abkaree deputy collector's offices, by the hands of peadahs.

The next witness* deposes that he saw the sum of money mentioned by the first witness delivered to the accused person and his acknowledgment for the same taken in the account-book.

* No. 2, Rajmongul Roy, Abkaree peishkar.

The third witness† deposes that he never received any money on account of rewards from the Abkaree office, nor ever gave a receipt for such money, and that the receipt for rupees nine and ten pie shewn to him is not written nor signed by him.

† No. 3, Ramsoonder Dhur.

The intention of producing this witness was to shew that a receipt (supposed to have been produced by the accused in his employer's office as a voucher for the money proved by the first two witnesses to have been delivered to him) was forged, but as no evidence of the production or exhibition of the said receipt by the accused person was offered, an essential link of the chain of testimony requisite to establish even a suspicion of forgery or uttering a forged paper against the accused is utterly wanting.

No other oral evidence was offered for the prosecution, and the documents for evidence were two books, one purporting to be an account-book of the Abkaree office, containing the entry of the expenditure of nine rupees and ten pie, vouched by the signature of the accused person, and the other, a *chelan* book of the collector's office, in which the signature of the witness, Ramsoonder Buxee, is declared to have been forged.

The accused person pleads *not guilty* to forgery or embezzlement, and acknowledging the receipt of nine rupees and ten pie, for transmission to the magistrate's office, states that he duly despatched the money by the hand of a peadah, named Asoa, who took it to the magistrate's office and brought back a receipt for the same on a book signed by Ramsoonder Buxee, witness No. 3. He urges moreover that the said peadah is a person of dishonest character and accustomed to the fabrication of false papers, and mentions a particular instance on which he forged

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a receipt, but on the threat of a prosecution, compromised the matter with the intending prosecutor.

For the defence, six witnesses were examined, one* of whom declared the accused to be a person of good character and another† that he saw the accused on the 21st or 22nd June, 1856, make over to a peadah, nine rupees some pice and a book to be delivered to the nazir of the magistrate's office, while the remaining four had nothing to say for the accused.

* No. 9, Koilaschunder Dutt.
† No. 10, Nillanund Dutt.

The law officer found the charges in the calendar clearly proved against the prisoner and thereupon pronounced him liable to *tazeer*.

Disapproving of this *futwa*, I find the evidence utterly insufficient to establish any of the charges against the accused and would therefore acquit him. The magistrate has been instructed to call upon the accused to furnish bail to appear to receive the sentence of the Presidency Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We consider the charge of embezzling Rs. 9-0-10 pie satisfactorily proved against the prisoner. He admits having received Rs. 9-0-10 pie for transmission to the magistrate's office; and that at the same time a *roobekari* of advice was delivered to him by the Mohafez to be forwarded to the magistrate. Neither the money nor the *roobekari* reached their destination.

The prisoner pleads in defence that he forwarded the amount and the *roobekari* through a peadeh of the name of Asoa, who brought him back the signature of Ramsoonder Dhur, foujdary nazir's Bukshee in the *chellan* book, as a voucher for the safe delivery of the money. There is now no doubt that the signature of Ramsoonder Dhur is a forgery; and the prisoner himself declares that the peadah, Asoa, is a man of unscrupulous character, who has been accused of similar mal-practices before. The admissions of the prisoner are such, that they fairly render it incumbent on him to account in some reasonable way for the non-receipt of the money in the foujdary. We think his defence is deficient in this respect. Only one of his witnesses is able to speak to having seen him deliver Rs. 9-0-10, to a peadah in the month of Assar, 1217, *Muggee*, for transmission to the foujdary, a statement far too indefinite to be relied upon as sufficient to clear the prisoner of this charge. We concur with the *futwa* of the Moulvee, to the extent of convicting the prisoner of embezzling the sum of Rs. 9-0-10, entrusted to him as an officer in Government employ; and sentence him to three years' imprisonment with labor commutable to a fine of 30 Rs. payable in one month.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

OPEE ALIAS OPOORNA BAGDINEE.

Hooghly.

1856.

November 27.

Case of OPEE *alias* OPOORNA BAGDINEE.

Conviction of a prisoner fraudulently obtaining certain charitable allowances from Government.

CRIME CHARGED.—Fraudulently obtaining Government money, for a number of years, under the false name of Parbutty Chokree.

Committing Officer.—Moulvee Abdool Luteef, deputy magistrate of Jehanabad, Hooghly.

Tried before Mr. R. P. Harrison, officiating sessions judge of Hooghly, on the 20th October, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads *not guilty.*

This case was taken up on the 16th instant, and postponed on the 17th for information from the collector's office, relative to the origin and nature of the pension granted to Parbutty Chokree, which the magistrate had been requested to procure and submit to this court. From the collector's return, it appears that there is no record in his office of the original grant of the pension but a letter from the Secretary to the Government of Bengal to the Board of Customs dated the 10th July, 1839, copy of which (marked A.) is annexed to the *nuthee* shows that on that date the Government sanctioned the continuance of certain charitable allowances at Ghuttal instituted by the late Mr. Tonchet, a former superintendent of the Government factory at that place, to seven persons who were then the only surviving objects of Mr. Tonchet's charity. Amongst the seven individuals enumerated, appears the name of Parbutty Chokree as the recipient of an allowance of 30 *seers* of rice, equal to 1 rupee, and it is this allowance which the prisoner is charged with fraudulently obtaining under the false name of Parbutty.

It is proved by the evidence of witnesses Nos. 1, 2, 3 and 4, that the prisoner has, at different times, since 1839, received the allowance of 1 rupee per mensem, which was payable to Parbutty Chokree. That when Parbutty's name was called the prisoner answered and representing herself to be Parbutty, drew the allowance in her name.

Witnesses Nos. 6 and 7, prove that the statement made by the prisoner before the foujdary court was voluntarily given. This statement does not amount to a confession of guilt, but the prisoner admitted that her name was Opee and that she was the daughter of Parbutty. She denied having drawn Parbutty's

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Case of OPEE *alias* OPOORNA BAGDINEE.

pension and stated that she had drawn for ten or twelve years a pension of one rupee a month which was granted to herself by Mr. Tonchet.

Witnesses Nos. 5 and 9 to 17, prove that the prisoner's name is Opee *alias* Opurna. The prisoner who appears to be about sixty-five or seventy years of age, very feeble and almost blind, makes no defence. She acknowledges that her name is Opee and states that the pension was given to her as charity. The jury, with whose assistance the case has been tried, find the prisoner guilty, a verdict in which I concur, considering that it is established by the evidence that she has falsely personated her mother Parbutty and fraudulently obtained Government money under that name.

I convict the prisoner of personation and fraud, but with reference to her age and infirmities and also to the apparent want of precaution in the payment of the pension granted by Mr. Tonchet, which must have acted as an encouragement to the representatives of deceased incumbents to apply for the allowance granted to their relatives, I am of opinion that a very slight punishment (if indeed any is called for beyond being deprived of the allowance) is all that is required. I recommend a sentence of one month's simple imprisonment.

The case is referred under Clause 1, Section 4, of Regulation VI. of 1832. The offence of which the prisoner is convicted, being one which I am not specifically empowered by the Regulations to punish.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Considering the nature of the offence and the extreme age of the prisoner, we sentence her to fifteen days' simple imprisonment.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND DUSWUNT SAO
versus
PEERBUKSH.

Patna.

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Case of PEERBUX.

The appeal of the prisoner was rejected, the evidence for the prosecution being trustworthy.

CRIME CHARGED.—Assault, attended with severe wounding of Duswunt Sao.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 29th August, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty.*

The prosecutor is a shop-keeper, the prisoner and his father, Mooradhun, live near him and have a running account with the shop. Mooradhun came to buy a seer of salt, but was reminded of the balance of his account, and offered a smaller quantity, which he refused and returned home, but came back almost immediately with the prisoner, Peerbuksh, who had a drawn sword in his hand with which, after abusing prosecutor, he struck at his neck seemingly, the prosecutor put up his left hand to fend off the blow (another was struck but the sword caught against the door-post) and was severely wounded (witnesses Nos. 1 and 2,) the gash on prosecutor's hand extended from the inside of the palm across the wrist about six inches in length with considerable depth. The evidence of witnesses, Nos. 6 and 7, the unhealed wound produced in court, and the plain facts of the case, preclude the necessity of the medical evidence. The prisoner was apprehended on the spot with the drawn sword in his hand by witnesses Nos. 3 and 4. The sword produced in court is sharp and heavy.

The prisoner in his defence says he was drinking *taree* at Narain Muhtoe's house when Duswunt, prosecutor, called him to speak to his brother, Bunsee, who offered him service; prisoner said he would take it at one rupee a month, when Duswunt and his brother, who were intoxicated, began abusing him. Prisoner remonstrated with them when they ran after him beating him, there were others also with them. Afterwards Bunsee came with a sword to strike him, but Duswunt forbade him, and in fending off a blow aimed at prisoner got wounded. They then beat him with sticks and stole thirty rupees from his house and a piece of cloth and two cups and a *kutora* and a *budna*, and when he went to give notice at the police *udda*, they tied his hands and ill used him, there was no burkundaz

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or chowkeedar at the police *udda*. The prosecutor has bought off all his first-named witnesses, he is rich, the prisoner poor.

The witnesses for the defence deny all knowledge of the matter, except on hearsay that the prosecutor and prisoner had quarrelled and that prosecutor was wounded on the hand by the prisoner.

The law officer brings in a *futwa* of guilty of the crime charged in the calendar, in which I concur.

There is no doubt of the facts, the prisoner's defence is evidently false and is utterly unsupported by the evidence produced by him. I convict him of assault with severe wounding, and sentence him to five years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with the conviction and sentence passed on the prisoner. The witnesses named by him in his defence before the magistrate prove the charge against him, and those examined on his behalf, upon the trial, do not, in any way, substantiate the pleas he has set up. The witnesses for the prosecution depose consistently as to the prisoner's commission of the assault charged. We reject his appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

Rungpore.

DEANUTOOLLA (No. 4,) AZOOLLA NUSIO (No. 5,) AND SHAFATOOLLA (No. 6.)

1856.

November 28.

Case of DEANUTOOLLA and others.

CRIME CHARGED.—1st count, attempt to murder Fayradoo Sircar; 2nd count, maltreatment by blinding with *bhela* and *chuna*, severe beating, tying hands and feet and throwing Fayradoo into an unfrequented place; 3rd count, aiding and abetting in the offence charged in the first count; 4th count, aiding and abetting in the offence charged in the second count.

The prisoners sentenced as their accomplices had previously been.

Committing Officer.—Mr. W. L. Robinson, officiating magistrate of Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 18th October, 1856.

Remarks by the sessions judge.—The particulars of this case and the orders passed by the Nizamut Adawlut, on the reference made by my predecessor regarding the prisoners previously brought to trial on these charges will be found in Volume V. Nizamut Adawlut reports Part I. pages 586 to 589.

That the parties now under trial were actually concerned in the maltreatment of Fayradoo is clearly established by the evidence of the eye-witnesses.

Fayradoo was found, the morning after the occurrence, tied hand and foot with his eyes closed with lime, &c. by witnesses Nos. 10 and 11, and taken by them to the house of witness No. 12. He was then unable to speak, but as soon as he recovered sufficiently to do so, he named these prisoners as appears from the evidence of Benda Nusio, witness No. 14, the cousin of Fayradoo, which is supported by the statement made by him at the thannah, on the 3rd December.

No. 10, Bhendoo Nusio.
" 11, Chuka Nusio.
" 12, Badea Nusio.

The eyes of the unfortunate Fayradoo have been completely destroyed. The prisoners do not deny that he lost his eyes through violence, but state that it was done by the ryots of the village of Goidmaree in consequence of his going by night to measure some lands in dispute between that village and Sarodobee. Their defence is in no way supported by the evidence adduced on their behalf.

Futwa of the law officer.—The law officer finds Azoolla, guilty on the 2nd and 4th counts, and the remaining two prisoners on the 4th only, and declares the first to be liable to ***kissas*** and the others to discretionary punishment.

I observe that the like verdict as regards the crime proved, was given in the former trial, but the court found all the prisoners guilty, on the second count.

Opinion of the sessions judge.—These prisoners, as well as those before convicted, are all, in my opinion, proved to have been principals in the maltreatment of Fayradoo, and are all liable to the same punishment. The punishment equivalent to that to which the law officer finds Azoolla liable is fourteen years.

Recommendation of the sessions judge.—I therefore convict the prisoners of 2nd count, and recommend that they be sentenced to fourteen years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The evidence was considered unimpeachable on the trial of the prisoners formerly arraigned. It is equally trustworthy with regard to the present prisoners, who have been named throughout by Fayradoo and the witnesses. We accordingly concur with the sessions judge in their conviction and the sentence proposed.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MUSSAMAUT JEHILY

versus

SUFDUR ALLY ALIAS SUBZ ALLY.

Patna.

1856.

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Case of SUFDUR ALLY *alias* SUBZ ALLY.

In the absence of proof of intent to murder, the prisoner was convicted of assault with severe wounding, and sentenced to five years' imprisonment with labor in irons.

CRIME CHARGED.—Wounding the prosecutrix, Mussamaut Jehily with a sword with intent to murder her.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 25th October, 1856.

Remarks by the sessions judge.—Prisoner pleads *not guilty.* Prosecutrix is prisoner's mistress, they live in a hired house in thannah Peerbahore. Prisoner is a chowkeedar in thannah Khaj Kullan some miles distant. On the night in question prisoner first quarrelled with some neighbours and on Jehily interfering struck her with a *lattee,* he was prevented at the time doing her further injury, but went to his watch-house four miles off and two hours afterwards towards midnight returned with a sword, Jehily was sleeping, he awoke her and asked for food, she had none to give, and abused him; on which he dragged her by the hair and inflicted several severe wounds with his sword, one blow cut off the upper part of her left ear, another divided an artery on the wrist; there was another wound on the head just above the temple, and several other slight ones about the arms and body. The evidence on the above points is chiefly that of Mussamaut Jehily; witness No. 1 Puttia Chokree is a mere child and could not be examined on oath, witness No. 3, proves the extent and danger of the wounds, No. 4, proves that prisoner came home late at night and quarrelled with Jehily for not giving him food, he heard them struggling, she called out that he was striking her with a sword, when he ran in and saw prisoner making off and prosecutrix lying bleeding on the ground, Nos. 5 and 6, depose to prisoner's running away at the time and to Jehily's wounded condition.

The prisoner's only plea is drunkenness, he denies having gone to the Chokee to fetch his sword, did not know what he was about.

The law officer brings in a verdict of guilty of the charge entered in the calendar on violent presumption.

I concur in the verdict of the law officer as to finding the prisoner guilty of assault with severe wounding, but without premeditation or previous malice or intent to murder. There is no proof beyond the deposition of prosecutrix that two hours in-

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tervened between a first quarrel and the final attack, and her evidence before the court on this point is contradictory; there is no doubt but that in a drunken fit of passion he wounded Jehily with a sword endangering her life, his former conduct towards her, however, had always been kind and considerate and she now deprecates the idea of his having intended to murder her and prays for his release, vide petition of Musst. Jehily appended to the record. Under these circumstances, I convict Sufdur Ally of assault with severe wounding and recommend him to five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—Present: Messrs. B. J. Colvin and J. H. Patton.) We agree with the sessions judge, that the intent to murder is not proved in this case. The prisoner had his sword in his hand at the time that he entered the house, but there is no reason to suppose that he carried it with any previous intention to assault prosecutrix, which he was only provoked to do by her abusing him on his asking for food. Under these circumstances we convict the prisoner of assault with severe wounding, and pass the sentence upon him which the sessions judge recommends, i. e., five years' imprisonment with labor in irons.

PRESENT:

H. T. RAIKES AND A. SCONCE, ESQS., *Judges*,
J. S. TORRENS, C. B. TREVOR AND E. A. SAMUELLS, ESQS., *Officiating Judges.*

GOVERNMENT
versus
BABOOLLAH KHAN.

24-Pergunnahs.

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The prisoner under trial having made on oath a charge before the darogah, which the darogah reported to be not true, was sent for and examined on oath by the magistrate.

Held by a majority of the Court, that the deposition so taken by the magistrate, though it contradicted or denied the statement made before the darogah, did not form a foundation for a charge of perjury.

Held also by a majority of the Court that the decision in the case of Bullye Doss (page

CRIME CHARGED.—1st count, perjury in having on the 27th July, 1856, deposed (on solemn declaration taken instead of an oath under Act V. of 1840, before Kistochunder Sha, darogah of thannah Moyda, in the case of Baboollah *versus* Mohesh Porah, charged with murder) that "Mohesh Porah struck my father with all his force on the back with a notched bamboo stick, on which my father cried out '*bapre bap*' and fell on the ground. I raised up my father and caused him to sit. When my father recovered a little he came home, leaning on my shoulder, he then being exhausted, lay down." And in having again, on the 4th August, 1856, before the magistrate of 24-Pergunnahs, deposed (on solemn declaration under the said Act V. of 1840,) that "no one assaulted or beat my father." One or other of such depositions being false, and they being contradictory of each other, on a point material to the issue of the case; 2nd count, perjury in having on the 4th August, 1856, deposed on solemn declaration (taken instead of an oath, under Act V. of 1840, before the magistrate of the 24-Pergunnahs, in the case of Baboollah *versus* Mohesh Porah charged with murder) that he had not stated before the darogah of Moyda, (in deposition dated the 27th July, 1856,) that Kassim Lushkur Peadah, had seized his (prisoner's) father, and Mohesh Gomashtah had struck him with a bamboo stick, such deposition being false and having been intentionally and deliberately given on a point material to the issue of the case.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 26th September, 1856.

Remarks by the additional sessions judge.—The prisoner in this calendar preferred a charge on oath at the thannah, on the 27th July last, against one Mohesh Porah, the gomashtah of his village, that he, Mohesh Porah, had two days previously violently struck his father on the back with a stick; that his father fell to the ground from the severity of the blow, and that he died from the effects of it the next day, the 26th July.

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1005 of the Nizt. Reports for 1856) is as a precedent superseded.

The darogah, in reporting the case, stated not only that the charge had not been proved, but that from enquiry he had made, it appeared that the father of the complainant had died suddenly, a natural death, and the charge had been preferred in revenge for a payment of enhanced rent, the accused Mohesh Porah had been demanding from the complainant, but he took from the complainant no security under Clause 3, Section 23, Regulation XX. 1817.

The magistrate took a different view of the matter. He thought the charge probably a true one, and sent for the prosecutor, who then, however, deposed to the effect that he had preferred at the thannah no such charge, and that no one had ill-used his father before his death. The magistrate ascribed this last deposition to collusion with, or fear of, the accused, and committed the complainant for perjury. The contradictory statements on oath on a point which was of course most material have been duly sworn to by the attesting and other witnesses, and the law officer convicts the prisoner of the crime charged.

I am most reluctantly compelled to disagree with this verdict under the precedent recorded in the Nizamut Reports for June last, page 1005, Government *versus* Bullye Doss, a case analogous to this in all its features. I should, however, be very glad if the Court on re-consideration would see fit to set aside that precedent, and in the present instance to agree with the law officer's *futwa against* my reference and award three years' imprisonment. It appears to me that the doctrine laid down in that precedent is against universal usage, general policy, and the intent of the law, while none of the Regulations quoted by the Court are, as it seems to me, at all applicable. Regulation XX. 1817, Section 23, Clause 3, only shews the police how to act to bring malicious complainants to justice. Regulation III. 1812, Section 2, Clause 6, notwithstanding the words "charges for more heinous offences," clearly refers to "*huzori*" or direct charges only, and such as are for offences against the person and not against society at large, such as thefts and murders, and Regulation XVII. 1817, Section 13, is in no way restricted as to a second deposition in the same matter.

There appears to me no law whatever under which a magistrate is prohibited from summoning and recording the evidence of a prosecutor and his witnesses in a case of murder or theft, where the police have reported, perhaps collusively, the charge a false one, (and by so doing, deterred the complainant whose passion too has had time to cool, from braving them and the influential party he has accused by going in person to the magistrate's court to reiterate his accusation) but where he himself has grounds for a suspicion that the charge is true. By so construing the law the result really is, that the magistrates are

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debarred from dealing with any heinous crime against society which the police in collusion with the party immediately aggrieved may please to hush up.

I need not remind the Court that in cases of this nature the prosecution may be conducted on the part of the Government; that it is no hardship to the original prosecutor at the thannah (even if his charge be false) to be brought in to give evidence before the magistrate, and that to the witnesses it is the same whether the case is prosecuted before the magistrate, by the original prosecutor or on the part of the Government.

With much deference I would submit that the precedent, under which this reference by me is compulsorily made, is based on incorrect grounds and should be annulled.

Note by Messrs. Samuells and Money referring the case of Baboollah Khan to a full bench.

The prisoner has been committed for trial on two distinct counts; the first charging him with having deliberately and intentionally emitted two depositions on the usual solemn declaration, one before the darogah of police, the other before the magistrate of the district, contradictory of each other on a point material to the issue of the case in which they were given, (such contradictory statements being of themselves sufficient according to the practice of our courts to prove the falsity of the deponent's oath), and the second alleging a certain material statement which the prisoner made on solemn declaration in the same case before the magistrate of the district, to be false and to have been intentionally and deliberately put forth.

We find the facts charged in both counts clearly proved against the prisoner. He deposed circumstantially before the darogah to an assault having been committed in his presence upon his deceased father, and to this assault he attributed his father's death. In his evidence before the magistrate, he denied positively that any such assault had taken place. He swore before the magistrate that he had not charged Mohesh Gomashtah at the thannah with having assaulted his father, and it is proved by the evidence of the witnesses that he did so charge him. These depositions all appear to have been deliberately given; they refer to points most material to the issue of the case in which they were recorded; and but for the recent decision in the case of Bullye Doss (p. 1005, of the Nizamut Reports for the current year) to which the sessions judge has adverted, we should not have doubted that they were made before officers who had competent jurisdiction.

The material portions of the judgments which were delivered in the case of Bullye Doss are, we find, as follows: "The charge" says Mr. Raikes "was one of burglary, and had apparently been formally laid before the police; and the darogah after enquiry into the case considered the charge against the

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accused was false; and that no crime had been committed. The mode of procedure to be adopted in such cases is laid down in Section 23, Clause 3, Regulation XX. of 1817, but the darogah instead of following that course verbally intimated his opinion to the magistrate, who verbally directed him to *send up* the prosecutor and his witnesses. This was accordingly done and the darogah's report of the case subsequently transmitted: the question is, was the magistrate legally authorized to take down the prosecutor's complaint, and the depositions of the witness is on oath, and prefer a charge of perjury on any false statement contained in them?

"The law which provides in certain cases that a magistrate shall not proceed to issue any process against an accused party, without satisfying himself that adequate grounds exist for proceeding against such person is Clause 6, Section 2, Regulation III. of 1812. But it seems to me that that law contemplates charges only that are brought by parties *voluntarily before the magistrate*, whether those charges relate to the offences specially reserved for the magistrate's sole cognizance as therein provided or to those of a more heinous nature.

"The law points out that the magistrate is not to rely on the statements of the parties only, but to examine their witnesses when the truth of the charge is distrusted; but it could not be necessary to inculcate such precautions if it was at the same time supposed that preliminary enquiries had already thrown doubt and suspicion on the motives and statements of the complainants,......................With the circumstances of this case as disclosed in the magistrate's proceedings before me, I cannot consider him as acting under Section 2, Regulation III. of 1812, and he could only carry on an enquiry of this nature, if the complainant, dissatisfied with the darogah's enquiry, again preferred the complaint before the magistrate himself. It is, however, one thing to await the tender of a complaint by a party pressing for redress, and another to have up a person, *nolens volens*, to depose on oath at the magistrate's own instance in support of an accusation which has already broken down.

"I hold the magistrate to have no such authority as will justify him in administering an oath under such circumstances; and therefore the crime of perjury as described in Section 13, Regulation XVII. 1817, has not been committed, and I would acquit the prisoner."

Mr. Colvin's opinion is to the same purport. "In the present case," he observes "the prosecutor did not come spontaneously before the magistrate. He and his witnesses were sent for to repeat their statements. When the darogah reported the groundlessness of the charge he should have conformed to Clause 3, Section 23, Regulation XX. of 1817, or if the magistrate in distrust of the darogah's report wished to satisfy himself on the

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point, he should have directed that officer to notify to the prosecutor that he might prefer his charge direct to him, the magistrate. The magistrate would then have been at liberty to satisfy himself, as to the truth of the charge in the mode indicated by Clause 6, Section 2, Regulation III. of 1812, when of course proceedings for perjury could have been pursued, if necessary. As this enquiry was conducted in an illegal manner by the magistrate, the prisoner must be acquitted."

The conclusion then at which the judges have arrived in the case of Bullye Doss may be briefly stated to be this, that in heinous offences where the information happens to be laid before the darogah, the magistrate is not vested with authority to pursue the enquiry, if the darogah records an opinion in favor of the accused, and the prosecutor does not follow up his charge by a fresh information laid before the magistrate himself; and that as a necessary consequence, perjury cannot be assigned upon false statements made before the magistrate in the prosecution by that officer of a further enquiry held under such circumstances. The facts disclosed in the present case are nearly identical with those in the case of Bullye Doss. In both cases the charge was preferred at the thannah and reported by the darogah to be false: in neither case were the prosecutors put upon bail by the darogah in accordance with the provisions of Section 23, Regulation XX. of 1817; in neither did they appear spontaneously before the magistrate; and in both, the magistrate distrusting the truth, not of the charge, but of the darogah's report, sent for the prosecutors, and their witnesses, and examined them upon oath. It is absolutely necessary therefore that before giving any opinion upon the guilt of the prisoner who is now before us, we should determine whether the decision in the case of Bullye Doss is to be accepted as a good and valid precedent or not.

The point at issue, it will be observed. is one of serious importance; for if the law has been correctly laid down in the judgment we have quoted above, immediate legislative action would seem to be necessary, not only to guard against the evils anticipated by the sessions judge from the not-improbable collusion of the darogah and the prosecutor with the criminal, but to legalize the numerous convictions which have taken place during the last half century on evidence recorded under circumstances precisely similar to those which are now declared to render it invalid.

The uniform practice of our magistrates up to the present time has been to take the preliminary enquiries in heinous cases into their own hands, without respect to the opinions of the darogah or the wishes of the prosecutor, whenever they considered it requisite for the ends of justice that they should do so; and the first step on such occasions has usually been to

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send for the prosecutor and his witnesses, and to examine them upon oath or solemn declaration. Is this practice at variance with the law when it is adopted under the circumstances which we have described above as common to this case and to that o. Bullye Doss?

It is said that it is opposed to the provisions of Clause 3, Section 23, Regulation XX. of 1817, and of Clause 6, Section 2, Regulation III. of 1812. The first of these enactments prohibits the police "from subjecting prosecutors to any degree of restraint, unless their complaints should appear on enquiry to be false and malicious: in which case the circumstances," it is decla.ed, "shall be reported to the magistrate, and the complainant shall be required by the darogah to furnish bail for his appearance before the magistrate." Now the darogah's failure to demand bail from the complainant may very properly expose that functionary to the censure of his official superior; but it cannot, in our opinion, have any bearing upon the case of the complainant. It is the duty of a chowkeedar to apprehend a thief; but the thief is not entitled to plead the chowkeedar's neglect to do so, as a bar to the magistrate's jurisdiction in the event of his being apprehended on a charge of theft. Nor is there any thing in the law which renders it necessary for the magistrate to adopt the darogah's opinion of a charge without further enquiry, and to put the complainant on his trial for a false complaint. The darogah is not vested by law with any independent jurisdiction whatsoever; and his reports are, in every instance, submitted for the orders of the magistrate, who is at liberty to act upon the opinions they contain, or set them aside according to his judgment of their value. When, as in the case before us, a magistrate sees reason to suspect that the darogah's opinion may be biassed or incorrect, a due regard for justice will assuredly lead him to send for the prosecutor and his witnesses, (which the law, as we shall show presently, fully authorises him to do,) and re-examine them in person in order to satisfy himself of the truth or falsehood of the prosecutor's statements. Were he to rely implicitly upon the darogah's report he would frequently do great injustice to the prosecutor, he would certainly discourage complainants from coming forward, and he would run the risk of favouring by a too ready credulity the escape of criminals whom it was his duty to apprehend. Clause 3, Section 23, Regulation XX. of 1817, does not in our judgment bind the magistrate to any such line of conduct.

Let us turn now to Clause 6, Section 2, Regulation III. of 1812. For the sake of ready reference, we quote this clause at length in the margin,* as also that portion of Clause 2, Section 2, Regulation VII. of

* Regulation III 1812, Section 2, Clause 6, "With the view of further restraining the institution of prosecutions for adultery, fornication, calumny, abusive language, tres-

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passes and assaults which ordinarily prove to be unfounded, misrepresented or greatly exaggerated, the magistrates are hereby strictly prohibited from issuing any process on these as well as charges for more heinous offences, without previously examining the prosecutor as to the specific facts of the case, and satisfying themselves that adequate grounds exist for proceeding against the accused party. In cases likewise in which the magistrate shall see grounds to distrust the truth of a charge, he shall previously to issuing process against the accused, summon the witnesses named by the prosecutor or as many of them as he may judge proper and examine them as to their knowledge of the facts and circumstances which are the subject of the complaint; but enquiries of this nature shall not on any account be committed to the police darogahs, who are precluded from taking cognizance of the cases, to which this provision specially refers" by Regulation VII. of 1811. "On occasions, on which, the magistrate may judge it necessary to make the previous enquiry above noticed, the rules contained in the preceding clauses of this section, regarding the payment of the subsistence of witnesses, shall be duly enforced."

Regulation VII. 1811, Section 2, Clause 2. "No police officer of the description above specified, shall hereafter receive any charge of adultery, fornication, rape, calumny, abusive language, slight trespass or inconsiderable assault."

Regulation IX. 1807, Section 4. Clause 4. "This shall not, however, be construed to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear, upon the report of a police officer, or upon any other credible information."

Clause 5. "If the magistrate see cause to distrust the truth of a complaint, preferred to him; whether from the nature of the charge, as

1811, to which it refers; and we add extracts from the 4th and 5th Sections of Regulation IX. of 1807 and from Section 3, Regulation III. 1812. A perusal and comparison of these Clauses and Sections will, we think, render it evident that of the three sentences into which Clause 6, Section 2, Regulation III. of 1812, is divided, the last two refer solely to those petty cases which the darogahs were prohibited by Regulation VII. of 1811 from investigating; and that the parenthetical reference to heinous offences in the first sentence is merely declaration of, or allusion to, the law with regard to charges of heinous offences preferred *direct* to the magistrate as that law existed in Sections 4 and 5, Regulation IX. of 1807 and Section 3, Regulation III. of 1812. It has, in our opinion, no connection whatsoever with charges preferred as in this case at the thannah, and a non-observance of its provisions cannot therefore be said to invalidate the magistrate's proceedings. Indeed even in those heinous cases where the charge is preferred direct to the magistrate, Regulation III. of 1812, is not, it is clear, the law under which the magistrate must proceed if he distrusts the truth of the complainant's charge. Section 5, Regulation IX. of 1807 is, we apprehend, the law applicable to such cases.

Is it then any objection to the magistrate's jurisdiction that the evidence of the prosecutor in this case was not given

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manifestly improbable, exaggerated, or vexatious; or from the circumstances deposed to him, considered with the known situation and character of the person accused; and if the immediate arrest of the party complained against, appear unnecessary and objectionable; the magistrate is authorized to postpone issuing his warrant for apprehension, and to cause a previous enquiry to be made, either by means of the police officers, or by such other mode as he shall judge most proper for the purpose of ascertaining the truth or falsehood of the complainant's allegation."

Regulation III. 1812, Section 3. "It is hereby declared, that in ordinary cases individuals having charges of a criminal nature to prefer, shall attend in person, to institute, and conduct the prosecution before the magistrate, and likewise before the court of circuit, in cases in which the charge may be made over for trial to that court; and that vakeels or agents shall not be permitted to interfere in the conduct of such prosecutions, unless substantial reasons be shewn, (to be recorded of course on the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person."

spontaneously, and that he was summoned *nolens volens* to appear before the magistrate? It does not appear, we may remark, either in this case nor in that of Bullye Doss, that the prosecutors evinced any unwillingness to give evidence, or objected to appear before the magistrate. For aught that we can see, the magistrate's summons may merely have anticipated the complainants' wishes, but assuming that the complainants did object to proceed to the station, and that they were compelled by the magistrate to give their evidence, we nevertheless hold that the magistrate's proceedings were strictly legal; for the very essence of a judicial oath is. that it is compulsory. The laws of all civilized countries draw a broad distinction between judicial oaths and voluntary oaths; thus for instance, in the perjury case of R. *v.* Bishop quoted in Roscoe, page 809, Coleridge.

I held that "the indictment was bad, as the affidavit did not appear to be made on a judicial proceeding; since for any thing that appeared, it might have been a *voluntary* oath; and Alison in his principles of Scottish law (p. 471) remarks "*voluntary* affidavits even to the most important facts before a magistrate are not the fit subjects of prosecutions for perjury," and so with the oath of allegiance, and other voluntary oaths. In this country, under Clause 2, Section 2, Regulation L. of 1803, and Section 6, Regulation IV. of 1793, witnesses not attending on a summons or refusing to give evidence may be seized and brought before the court, committed to custody, fined 500 Rs. and imprisoned until the fine be paid. An oath before a magistrate in this country therefore as elsewhere is a compulsory, not a voluntary oath; and the fact of the prosecutor, who, in heinous cases, is in the same category, with the witness, being brought *nolens volens* before the court, and compelled to give his testimony, cannot in our opinion be said to invalidate his evidence; for this, as we have seen, is, or may be, the common fate of all witnesses.

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Is the magistrate's jurisdiction, then, barred in such cases, as those we are now considering, by the complainant's unwillingness to prosecute the case before the magistrate? We can see no ground for such a supposition. In our view of the law the magistrate is quite independent of the prosecutor. He is at liberty in any heinous case where he may consider it necessary to do so, to appoint a public prosecutor;* and it is manifest that this power necessarily implies that of determining primarily by the examination of the complainant and his witnesses, whether it is advisable to institute a public prosecution or not.

* Regulation L. of 1803, Section 4, Constructions 318 and 778.
See also Regrlation IV. 1822, Section 3.

The very duty imposed upon the magistrates also of apprehending murderers, robbers,† &c. requires that they should examine those who know the facts of such murders and robberies, and can testify to them; and neither the consent of the prosecutor nor any express law would appear to be necessary to render it legal for them to take evidence in such cases. The power of enforcing the attendance of witnesses in heinous cases is inherent in all justices, inasmuch as it is absolutely requisite in order to ensure a due administration of justice. But the distinct sanction of the law is not wanting. By Clause 2, Section 2, Regulation II. of 1832, magistrates are specially authorized to enquire into cases of burglary, whether the injured party prosecutes or not; and in all heinous offences, generally, the magistrate is empowered by Sections 4 and 5, Regulation IX. of 1807, "to act upon the report of a police officer or upon any other credible information;" while Clause 1, Section 2, Regulation L. of 1803, gives him the power of summoning unwilling witnesses, not only in criminal trials but expressly in other "matters cognizable by the magistrates," such as preliminary enquiries into cases of homicide and burglary undoubtedly are.

† Regulation IX. of 1793, Section 4.

But in this case as in that of Bullye Doss, the prosecutor cannot be said to have been an unwilling witness. *He laid his information on oath at the thannah suo motu.* Now it is important to note with what object he did this, and what is the nature and probable effect, under the law, of an information so laid. Under the original system of police administration inaugurated in 1793, complaints of serious offences were brought before the magistrate, precisely, as they are in England. The darogah was authorized‡ to receive the charge, to apprehend the accused on the responsibility of the complainant, and to forward him to the magistrate; but it rested with the magistrate alone to take informations on oath,

‡ Section 7, Regulation XXII. of 1793.

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or to exercise any judicial functions. This system, however, it was soon found, was productive of intolerable oppression. The risk of an action for false imprisonment was no check upon vindictive complainants; and the districts were so large that the information in most cases could not be taken by the magistrate for many days after the charge was preferred. By Regulation IX. of 1807, and subsequently, by XX. of 1817, the darogah was therefore empowered to administer an oath to the prosecutor, to enquire into the charge, though without putting witnesses upon their oaths; and to stay the issue of process against the accused pending the magistrate's orders, if he saw any special reason for doing so. But it is evident from a perusal of the enactments that the object of allowing the plaintiff the option of preferring his charge before the magistrate or the darogah, as he thought fit was simply the public convenience; and that the original relation between the magistrate and the darogah remains quite unaltered. The darogah has no power any more than he had before, of adjudicating upon the information, which he takes, or of passing any final orders regarding it. His duty is to forward it without delay to the magistrate; and to act upon such orders from the magistrate as he may receive.* The law in fact views the information laid before the darogah precisely in the same light in regard to the magistrate's jurisdiction, as if it had been laid before the magistrate himself; for it is the magistrate who passes orders upon it, and who superintends all the subsequent investigations.

The prosecutor's object in complaining at the thannah necessarily was under these circumstances, that his information should be laid before the magistrate and that he and his witnesses should either be sent to the magistrate or bound over to appear before him. Darogahs are not at liberty to admit compromises in any cases, however trivial;† and every prosecutor, therefore, is perfectly well aware that after his complaint is made at the thannah, the further prosecution of the case, or its abandonment rests entirely with the magistrate. This being the state of the law, it is impossible, we think, to presume that a complainant who prefers a charge to the darogah is unwilling to appear before the magistrate; and equally impossible to consider such unwillingness, if evinced, any ground for depriving the magistrate of his jurisdiction in cases of murder or robbery.

The transmission of the parties to the magistrate, consequent on a charge of murder or burglary, is the ordinary course which the law contemplates. The darogah may be unable to apprehend the party charged, or he may consider that there is no

* Secs. 4 and 13 Reg. XX. of 1817 and C. O. No. 138. June 16th, 1843.

† Clause 3, Section 12, Regulation XX. of 1817.

good ground for apprehending him; and in either of these cases he may suspend the transmission of the complainant and his witnesses, taking recognizances from them to appear, if required;* but this is permitted solely with a view of enabling him to await the magistrate's instructions.† Upon the receipt of these, he is bound to conform to them.‡ In like manner, if the party charged has been apprehended, and the darogah does not consider the case proved against him, he is at liberty to place him on bail, instead of forwarding him to the station; but here again the discretion thus vested in him is to be exercised subject to the approval of the magistrate, whose orders are necessary for the final discharge of the accused, and who may direct the case to be sent up to him, if he thinks proper.§ Nowhere does the law confer the power either on the darogah, or the complainant of interposing a barrier between the magistrate and the criminal, or of putting a stop to the magistrate's enquiries into crimes which may be brought to his notice; and these enquiries, it is manifest, can in numerous instances be brought to a satisfactory conclusion only through the examination of the prosecutor and his witnesses by the magistrate in person. The judicial and executive functions of magistrates, in this country, are, in fact, so intimately blended, that it is impossible to separate them.

* Clause 6, Section 13, Regulation XX. 1817.

† Clause 1, Section 25, Regulation XX. 1817.

‡ Section 4, Regulation XX. 1817.

§ Clause 17, Section 19, Regulation XX. of 1817.

Our view of the law may be gathered from the preceding remarks. We hold that the darogah is merely the agent of the magistrate subject to his control, in every matter connected with his duty, and possessing no power of discharging prosecutors or witnesses in heinous cases, so as to preclude the magistrate from requiring their attendance for the purpose of giving evidence before himself. We consider that the darogah's opinion of the truth or falsehood of the complainant's charge is in no way binding upon the magistrate, and can form no bar to his jurisdiction. We conceive the complainant's disinclination to give evidence before the magistrate, where such disinclination exists, to be quite immaterial. We are of opinion that the magistrate has competent jurisdiction in every case of heinous crime, in which an information has been laid on oath before the darogah, whether the darogah and the prosecutor wish to carry the charge before the magistrate or not; that the manner in which the prosecutor or his witnesses are brought before the magistrate cannot operate to deprive that officer of his jurisdiction; that he may at any stage of the darogah's investigation take the enquiry into his own hands; that he may call for and

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examine the prosecutor and witnesses in the course of such enquiry, and that he may lawfully commit any prosecutor or witness for perjury, who deliberately makes a false statement in the course of such examination on a point material to the issue of the case.

We cannot therefore recognize the authority of the precedent in the case of Bullye Doss; and we would convict the prisoner in the present case of perjury, and sentence him to three years' imprisonment with labor in irons. As the point, however, involved in this judgment is of great importance, and it is very necessary that any exposition of the law, which may now be given, should be authoritative, and not open to future question, we desire that the papers of the case be laid before a full bench of the Court, for final disposal.

Mr. H. T. Raikes.—It is only necessary to refer briefly to the circumstances of this case. The prisoner, Baboollah, was sent for by the police darogah of thannah Mydub, to verify the particulars of his father's death, reported at the thannah, to have proceeded from natural causes. When brought to the thannah by the mohurrir and a burkundaz, his deposition was taken down on solemn affirmation, and he then deposed that his father had been assaulted by the gomashtah of the village on a day mentioned, and though not apparently suffering from the assault in the interval, had died from internal hemorrhage on the following day, which the prisoner attributed to the beating. As this story of the assault was not supported by any one, and the neighbours unanimously accounted for the deceased's death from disease and natural causes, the darogah so reported the matter to the magistrate of the 24-Pergunnahs; who, conceiving it possible that the darogah might intend to mislead him, directed the prisoner, as complainant, to be sent to him, and on his arrival, without ascertaining by any previous question what he had to say, swore him in accordance with Act V. of 1840, and on the prisoner affirming that he had no charge to prefer against any one, and had never accused any person of maltreating his father, or attributed his death to any such cause, the magistrate, on the ground of contradictory statements emitted by the prisoner, on the 27th July, before the darogah, and on the 4th August, before himself, on a point material to the issue before him, and on the ground that prisoner denied on oath having made that first statement to the police, committed him for perjury. On these charges, the additional sessions judge, who tried him, and the judges of this court, before whom the trial came on the reference, propose to convict the prisoner of wilful and deliberate perjury; but considering the case of Bullye Doss, decided on the 26th of June last, by a bench of three judges, to be a precedent against conviction, the circumstances there referred to being, in their opinion, similar to those of the present

case, they have referred the case of the prisoner Baboollah for an authoritative decision as to the legal competency of a magistrate to send for prosecutors and witnesses and examine them on oath, regarding groundless complaints which have been reported as such by the darogah when examined into by him at the thannah.

The circumstances of the case now before us, hardly admit of a comparison with those of the precedent cited, as the case here turns upon a point which wholly distinguishes it from the other.

In the case of Bullye Doss, the prosecutor reiterated to the magistrate the charge he had previously made at the thannah, while the *perjury charged* was committed by a *witness*, and the acquittal was on the ground that as no law empowered the magistrate in a simple preliminary enquiry, not being one under the circumstances provided for by Clause 6, Section 2, Regulation III. of 1812, to examine persons on oath, the penalty of perjury could not be incurred.

In this case the party committed for the perjury was apparently examined by the magistrate as a complainant; when, however, his statement was taken down in writing, it contained no charge at all against any one, and as it was impossible for the magistrate to act upon it, or make it the ground of further proceedings in any shape, the question is, was it lawful to swear the prisoner to such a deposition? I, of course, lay no stress upon the circumstance that the magistrate put the prisoner upon oath, before he knew what he was going to depose, if the substance of the deposition was such that the magistrate was not legally competent to swear him at all to it, the administration of the oath *beforehand* cannot, in my opinion, legally affect the question.

The legality of a conviction in this case then depends entirely on the competency of the magistrate to take the prisoner's deposition of the 4th of August last on oath, or on solemn affirmation as provided for by Act V. of 1840.

It has been argued that the magistrate is not in any way bound to respect the opinion of the darogah on the result of the enquiries made by him under Section 13, Regulation XX. of 1817; that upon mere suspicion, that the darogah may have intended to mislead him, or for any other indefinite reason, the magistrate is competent to send for a complainant and any other persons examined by the darogah, and *compel* them to undergo an examination on oath before himself, as to the truth of the matters enquired into by the darogah. That the same compulsory rules, which apply to parties and witnesses when giving their statements and evidence on other occasions, apply to those who are thus sent for by the magistrate, and consequently, any act of contumacy, or any instance of falsehood

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occurring on these occasions, render those guilty of them liable to the penalties prescribed for such offences.

If I allowed this to be the law which governed proceedings of this nature, the contradictory statements of the prisoner on oath, before the darogah and the magistrate, would doubtless be *proof* of his having sworn falsely on one occasion or the other, the duty of those who swore him being simply to administer that solemn obligation without regard to, or previous knowledge of, what his statements or deposition would contain.

This, no doubt, is what is required of a magistrate or judge when presiding at a judicial trial. Before a party or a witness can state any thing on such an occasion, he is both warned and sworn to speak the truth ; and if he either refuses to depose, or fails to speak the truth, on all material points, he is punishable under Regulation L. of 1803, and Regulation II. of 1807. But except on the occasions of a trial, I know no law which *compels* parties or witnesses to make statements on *oath* and in the case of complainants I will now proceed to show, that as I understand the law, no such *compulsory* process can ever legally be had recourse to.

Sections 3 and 4, Regulation IX. of 1807, provide that a magistrate may take cognizance of offences either by a complaint in writing being preferred before him, by the report of a police officer, or by any other credible information. But if the only information before him be in the shape of a charge preferred by a complainant, he is required by the Sections referred to, before issuing a warrant to swear the complainant to the truth of the charge, and Section 4 enjoins that "no warrant for apprehension shall be issued at the instance of a complainant, *unless* the truth of the charge be deposed to on oath either by the complainant himself or by some other credible person." It seems to me impossible to presume that the law ever contemplated this swearing of the complainant as a *compulsory* process. The complainant or some other credible person is certainly required to swear to the truth of a charge when preferred, to enable the magistrate to receive the complaint and to take cognizance of it; but the magistrate cannot compel any one to prefer such a complaint nor to swear to the contents of it; and should this guarantee of its truth not be given, it is obviously intended that the magistrate shall refuse to act upon it; but I do not see that the law allows him to do more; the same rule must be held to be applicable to persons who may be said to be witnesses, that is, those who are referred to in Section 4, as "persons present, or otherwise personally informed of the truth of the complaint."

It is then clearly for the purpose of acting on the complaint that the magistrate receives it *after its truth has been deposed to ;* but if the party's deposition discloses that there is no com-

plaint whatever for the magistrate to act upon, there can be no possible use in swearing the complainant or any one else regarding it, and with the absence of any reason or necessity for proceeding further, the power of the magistrate to impose this obligation of an oath cannot be legally exercised.

To apply this view of the law then to the prisoner's statements of the 4th of August last, it is important to remember that he preferred no charge against any one, denied that he had done so already, or had attributed his father's death to any ill-treatment.

The question before us is not whether this statement is true or false, but whether, looking at the position of the prisoner when brought before the magistrate as a complainant, he, the magistrate, was legally competent, under the circumstances, to put him on oath or on solemn affirmation. I hold he was not; as the statement disclosed nothing of which the magistrate could take legal cognizance, he could, consequently, have no grounds for proceeding upon it, and the law therefore did not require that the prisoner should be put upon solemn affirmation regarding its purport.

I do not see that the magistrate's proceedings derive any legal force from the fact of the prisoner having previously preferred a charge at the thannah.

The darogah was competent to enquire into the charge so preferred and is directed by Section 25, Regulation XX. of 1817, to arrest the accused or suspected party, that is to say, to take cognizance of the charge *only*, "on his being satisfied from the particulars communicated that there are grounds to believe that the charge is well founded and that the immediate apprehension of the offender is necessary to the ends of justice." In the present case, the darogah was not satisfied that there were grounds for the apprehension of any one; and though, I am willing to allow that a magistrate is not bound to close all further enquiry on receiving such a report from the police, I do maintain that the magistrate cannot take legal cognizance of the charge so preferred without assigning sufficient reason for his interference, those reasons being derived from credible information in some shape.

Had the prisoner, in the present case, done what he apparently wished to do, namely admitted to the magistrate that his accusation of the gomashtah was untrue or had been made without sufficient reason, it is my opinion that, even had the magistrate been competent to examine him on oath as he did, he could not have made the admission of previous falsehood a ground of prosecution for perjury, as Section 32, Act II. of 1856, which compels persons to answer criminating questions and also absolves them from all legal liabilities thereon, provided the statement itself be true, would have effectually pre-

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vented such statement being used against him. So far then as the charge derives support from *contradictory* statements, I think the prisoner would have a good defence (as the falsehood of the last statement is not proved or affirmed) under Section 32, of the Act referred to, as nullifying any criminating effect of his second statement; but I also hold the magistrate incompetent to administer the oath he did on that occasion and I would acquit the prisoner on that ground.

Mr. A. Sconce.—From the prisoner, Baboollah Khan, two depositions on oath have been taken, one by the police darogah, on the 27th July, 1856, a second by the magistrate, on the 4th August, and upon these depositions two charges of perjury have been founded. First, because the two depositions are contradictory of each other and next because the deposition delivered before the magistrate was absolutely false.

There is no question as to the legal nature of the deposition recorded by the darogah. Baboollah Khan appeared before this officer, as a complainant, and under a solemn affirmation delivered the statement which the darogah wrote down. Further, it is to be admitted, as a mere expression of what circumstances occurred, that the same Baboollah Khan, in the presence of the magistrate, also under a solemn affirmation, delivered the deposition of the 4th August, to which both charges refer. The technical proof of the utterance of this deposition is as complete as of the first: but the point for the determination of the Court is, whether under the circumstances of the case, it was competent to the magistrate to exact from Baboollah Khan a solemn affirmation, and to record his deposition under the penalties of the law of perjury.

The judges who first sat in this trial considered that the prisoner should be convicted of perjury; but in consideration of the acquittal pronounced in the case of Bullye Doss, on the 26th June last, and under the impression that it had been ruled by the judges, who sat on that trial, that it was absolutely illegal in the magistrate to send for, and under a solemn affirmation examine persons who, like Bullye Doss, was on trial on that occasion or like Baboollah, on trial now, they submitted the proceedings recorded in the latter trial for the consideration of a full bench.

The cases of Bullye Doss and Baboollah Khan are not, I think by any means the same. Bullye Doss was summoned by the magistrate as a witness; Baboollah Khan as a prosecutor: and between these two positions and the personal responsibilities which they entail, there is I think, a very great distinction. But whether the two cases be identical or not, it is my duty on the present occasion to consider not whether I should have convicted or acquitted Bullye Doss, but whether I am to convict or acquit Baboollah Khan.

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The features of the charge made to the darogah by Baboollah, on the 27th July, were, shortly these: he said that his father Peeroo was diseased, and had for some time suffered from spitting of blood; that on the 25th July, Peeroo was struck on the back with a stick by Mohesh Porah and fell; that next day when they were sowing rice, blood gushed from his father's mouth and he immediately died; and that he (Baboollah) thought his father died from the blow inflicted by Mohesh Porah. This charge, it will be seen, consisted more of opinion than of fact; but taking it, as presented, the darogah investigated the case and reported that Peeroo had died a natural death.

On receipt of the darogah's report, the magistrate desired Baboollah Khan to be sent in to him: and when this person arrived, the magistrate at once took from him the deposition which led to the present prosecution.

I am not prepared to question either the magistrate's discretion or his legal authority in sending for Baboollah Khan. It was no doubt the magistrate's intention that Baboollah Khan should come before him to seek redress for his father's violent death, if as a complainant he chose to assert that violent death before himself; and I do not think that the magistrate acted illegally in so far giving Baboollah Khan an opportunity of accepting that alternative. Up to this stage no pressure was put upon him. But it seems to me, that the legal character of the magistrate's proceedings subsequent to the attendance of Baboollah Khan is materially affected by what occurred. Baboollah Khan had no opportunity of saying what he chose to say, except under the penalties of the law of perjury. He was not simply asked whether he had a charge to prefer or no; whether or no he adhered to the statement imputed to him by the darogah: but being immediately sworn he was required to give his deposition. He would, if he could, have said simply that he had no charge to bring; but he had no alternative to speak otherwise than under an oath: and the tendency of the oath was either to make Baboollah Khan adhere to a statement to which he was unwilling to adhere; or, to subject him by abandoning his first statement to be charged with perjury. Before the darogah, Baboollah said that Mohesh Porah struck his father; before the magistrate he said, that no one struck his father. Here is contradiction; but I think not legal perjury. To constitute perjury, the deposition given, must be intentionally and deliberately given: but under the circumstances of the present case, though there is no ground for saying that Baboollah lay under physical compulsion or that his language was tutored, he cannot be said to have deliberately volunteered the statement which the magistrate, so to say, binding him with the shackles of an oath, exacted.

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I need hardly say that merely to possess the power of administering an oath does not justify the invariable administration of it without regard to the position of the party under examination. Here different reasons are observable why the prisoner should have hesitated to adhere to the accusation imputed to him. The assault spoken of may not have been true. The first information, lodged by a relation, was that Peeroo died a natural death; and it was not till the police mohurrir brought in Baboollah to the darogah that the assault was mentioned. Next, it must be considered that the darogah reported against the truth of the charge; and that this report subjected Baboollah to the charge of giving a false complaint. And again, Baboollah knowing and never concealing his father's sickness, may fairly have, on better thoughts, hesitated to charge Mohesh with being his murderer. Apparently Peeroo long suffering from disease of the lungs was suffocated from internal hemorrhage; and whether that hemorrhage was, in any way, occasioned by a blow struck (if struck) twenty-four hours before his death is a matter not now to be discussed. But apart from the fairness of primarily ascertaining from Baboollah upon what footing he came into court, there were in the reasons now recited grounds to apprehend that Baboollah might not repeat his charge in the terms originally ascribed to him; and under such circumstances the administration of an oath tended directly to confirm him in, or to lead him into, the commission of a serious crime.

There was some discussion on the first sitting of this bench as to whether our deliberations should not be confined to a point of law only; but it appeared to me to be impracticable to restrict ourselves to an issue declaratory of the guilt of the prisoner apart from the circumstances which created the charge. The opinion which I form is an opinion of mixed fact and law: and I deeply feel that merely to give a general opinion as to a magistrate's competency in administering oaths would, by no means, have met the very important question raised, as to the soundness of the present commitment. I, for these reasons, would acquit the prisoner.

Mr. C. B. Trevor.—This trial has been referred to five judges, in order that it may be authoritatively determined, whether the principle laid down in the case of Bullye Doss, so far as it is applicable to the facts of the present case, is correct law or not.

As a judge of the facts, I find from the evidence produced in the case, that the two contradictory statements charged against the prisoner in the first count of the calendar were made by him, and also that the deposition given before the magistrate, on the 4th August, 1856, denying that he had made a particular statement before the darogah of Moydah, as charged in the second count, was false.

The legal point remaining for argument was put by the Court before the pleaders in the following form, "Does the deposition on oath recorded by the magistrate on the 4th August, 1856, afford *in this case* a legal ground for sustaining the charge of perjury laid against the prisoner, with especial reference to the fact that he made no charge against any party in that deposition?"

The argument on the point thus laid down seemed to divide itself into two parts; one, looking to the general principle laid down in Bullye Doss's case, embraced the question whether depositions of complainants taken, as was that of the complainant in this case, are legal or not: the other looking to the particular circumstances of this case, comprehended the question whether, granting that the taking of the deposition of the complainant by the magistrate, as has been done, is legal, is the deposition on oath given *in this case* such as to afford a legal ground for sustaining the charge of perjury against the party making it.

Before giving an opinion upon the first point taken up in argument, it will be well to state what the principle in Bullye Doss's case really was, which is applicable to the case now before the Court.

The decision of the Court in that case seems to me to rule two points, which are quite distinct, one from another, the first was, that *when a magistrate acts in accordance with Section* 6, *Regulation III. of* 1812, a prosecutor and his witnesses are liable to the penalties prescribed, if they commit perjury, before the person charged is summoned to appear; the second, which alone is applicable to the case now before the Court, is this, viz., that after a charge, of the nature of those, of which the police are by law empowered to take cognizance, has been formally laid before the police, and the darogah after enquiry has given it as his opinion, that the charge is false, and that no crime has been committed, it is not competent to the magistrate to carry on the enquiry by sending for the prosecutor and his witnesses with a view to their examination, unless the complainant, dissatisfied with the darogah's enquiry, *again* prefers a complaint before the magistrate himself.

I would observe that in the case out of which the perjury of Bullye Doss arose, the complainant after being summoned, repeated before the magistrate the charge which he had preferred before the darogah and one of his witnesses, Bullye Doss, in giving his evidence made the false statement which was declared not to be perjury, in consequence of the magistrate not being authorized to take up the case in the mode in which he had.

I am of opinion, that the doctrine laid down by the judges in the second point ruled in Bullye Doss's case is not correct

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law; and that it is quite competent to, and that it is the duty of a magistrate to summon a party who has charged another by name with the committal of a *crime* before the darogah, even though the darogah disbelieve the charge, *with a view to the repetition of the charge before himself and to the founding thereon a judicial enquiry if it be persisted in;* and consequently that any prosecutor who repeats a charge or any witness who, after such repetition, gives false evidence on a point material to the issue before the magistrate, is liable to the penalties of perjury.

It appears to me, that under the law, as it stood before the enactment of Act II. of 1856, a magistrate could take cognizance of offences enquired into and in which the offenders were sent in by the police under the provisions of Regulation XX. of 1817, and that he could also act, with a view to the elucidation of crime and the punishment of the offenders on charges preferred before himself, on the report of a darogah, and also on other credible information; a charge made before a darogah cannot, I think be considered to be one made before the magistrate himself; were it so, a repetition of the deposition before the latter officer would not be, as it has always in practice been, considered to be necessary; but there can it seems to me, be no doubt but that if a charge made before a darogah, though disbelieved by him, seems to a magistrate to be credible, it can be made the *occasion* for the magistrate's action as coming under the head of credible information; and under this view, as above remarked, it seems to me that the magistrate had full power to act in the case out of which Bullye Doss's perjury arose, and moreover that in any case like that now before the Court in which the highest crime against society, murder, is charged against an individual by name before the police, it is his duty to enquire into it.

An Act was passed in the commencement of the year, Act II. of 1856, entitled an act to enable magistrates and certain other officers to take cognizance of certain offences, without requiring a written complaint; the preamble goes on to recite that, whereas it is expedient to enable magistrates and certain other officers to take cognizance of all offences *which affect the public*, without requiring a complaint in writing, on the attendance of a complainant, it is enacted as follows: and Section 2, of the law is to the following effect, "a magistrate, or other officer, having jurisdiction over such offence may, on the information of a police officer, or other person, to be given on oath or affirmation, or on his own personal knowledge, (having first recorded the grounds thereof in his own hand-writing,) proceed against any person for such offences in the same manner as if a complaint in writing had been preferred and duly deposed to."

A question may arise as to the meaning of the words

"*offences which affect the public;*" they may be restricted to those offences which affect the public health, safety and convenience; or they may be extended to those offences, which are usually denominated *crimes*, or violations of the rights of individuals in reference to their effect on the community in its aggregate capacity; in other words, on the public; even in the last sense, as the law is an enlarging law, it only prescribes new modes of action and does not take away either expressly, or by implication, any of those modes which previously existed; if this be so, it leaves the powers, which had been exercised by the magistrate, in cases similar to that before the Court, altogether untouched.

Though I am of opinion that the magistrate, in the case now before the Court, was not only warranted but required to place before himself as a judicial officer the charge of murder against an individual sworn to by Baboollah Khan before the police, with a view to founding a judicial enquiry upon any positive statement that he might make, still it appears to me, that when the magistrate discovered that the complainant before the police, in effect, withdrew his charges, and charged no one, he should have desisted from further enquiries from the party whom he had considered to be a complainant up to that time; the whole matter then before him, had fallen through; and there was nothing judicially before him; and any judicial enquiry to be made into the death of Baboollah Khan's father, must have been founded on information other than that given by Baboollah Khan in the mofussil.

It was, of course, competent to the magistrate, if he thought fit, to take steps for indicting Baboollah for perjury, for the deposition on oath made by him, before the police, charging the gomashtah with the murder of his, Baboollah's, father, and it was also competent to the magistrate through the police or otherwise to discover some other ground than Baboollah's statement, on which to found a judicial enquiry; and in case of success, Baboollah could have been made a witness and would have become liable to the penalty of perjury in case of a false deposition on oath; but it was not competent to the magistrate on the prisoner charging no one, *he having consequently nothing judicially before him, in which character alone he was acting;* to put any further question to him; but having done so, though the depositions themselves are contradictory and though the statement made by Baboollah before the magistrate, regarding what he had said in the mofussil, is false, still it appears to me the statement before the magistrate is not legally sufficient to sustain the charge of perjury against the prisoner; the magistrate, under the circumstances, not having been authorized in putting the question, and there being no matter judicially before him; in other words, no issue being before him to which the matter falsely deposed to, was material.

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Under the view expressed above, though I dissent from the principle laid down by the Court in Bullye Doss's case, I would acquit the prisoner now before the Court and order his immediate release.

Mr. J. S. Torrens.—The judges of our Court, who first heard this case on reference from the sessions court, having found, according to the evidence on the facts, that the prisoner was guilty of the crime charged against him, and having sent the case to the full bench really on a point of law, it appears to me that the most regular course would have been to determine the point and return the case to the judges competent to pass sentence in it, that they might do so according to their own judgment, and the determination arrived at on the particular point reserved. As a different course has been adopted, and the Court, as now sitting, have entered into the facts, I am called on to give my judgment according to the whole merits of the case as it stands. The father of the prisoner, it appears, having died suddenly, (whether from the causes first represented or not, it is not now necessary to enquire) he appeared before the darogah, and gave information that death had ensued from a beating inflicted on the deceased by the gomashtah of the village; and he prayed that investigation might take place as to the guilt of the gomashtah. This information given on solemn affirmation having been formally witnessed and recorded was forwarded by the darogah to the magistrate, with an opinion, however, of the former that the truth of the statements of the informant was not established. On this, the prisoner having been sent for by the magistrate, not, as I look on the question, simply as a prosecutor, but as an informant, on whose recorded statement the magistrate, irrespectively of the opinion of his darogah, in the matter of a heinous offence was bound to act, unless clear that the statements were untrue, gave, on a repeated solemn affirmation, a deposition, not only directly the opposite of what he had made before the darogah, but distinctly and deliberately swearing that he had never made any such deposition. The magistrate abandoned any further investigations on the information against the gomashtah and committed the prisoner, the informant, for trial on charge of perjury, as given in the several counts entered in the calendar as above; and after examination of witnesses, who have proved, as I think beyond any question, the statements recorded at the thannah as having been made by the prisoner, he has been found guilty by the *futwa* of the law officer on the charge as laid. The sessions judge, considering that a construction of the law of perjury, as given by this Court, on the 26th of June last, in the case of Bullye Doss, legally precluded him from assenting to the *futwa* of his law officer, has referred the case. The counsel for the prisoner does not dispute the fact of the false statements having been made by

the prisoner before the magistrate; but he contends, that when that officer took the deposition, he was doing so without legal powers under the Regulations, and consequently, the prisoner cannot be convicted. It is argued that the darogah having finally pronounced the accusation or information unfounded, the magistrate's authority to take a deposition from the prisoner was cut off. It is much to be desired that all parts of the Regulations were as clear, as those which guide us as to what we are to consider the crime of perjury under them to be. Section 13, Regulation XVII. 1817, declares it to consist in a false deposition on oath or affirmation before a *public officer* authorized to take the same, though the deposition may not relate to any *judicial* proceeding; and provided it shall clearly appear to have been given falsely and criminally on a point material to the case in which the deposition may have been taken. The word case here most obviously does not mean a trial of A *versus* B; it simply means the matter concerning which the public officer, as described, has the power to call parties before him, and take their depositions; so that even were there no actual charge by one party against another, immediately made before the magistrate, I conceive as he is clearly and indisputably authorized to take up enquiries into heinous offences on any information given him, he would have been fully competent to take and compel the deposition of the party at any time in the course of the enquiries which had commenced. The circumstance of the darogah having pronounced the opinion that the charge as first made was, in his view, unfounded, does not, according to the words or intent of Section 23, Regulation XX. 1817, preclude the magistrate from going on with the enquiry set on foot on the information first given, so that even where there has been literally no charge made in the immediate presence of the magistrate, even where the person by whom a murder has been committed remains undiscovered or unknown, the magistrate in prosecuting his enquiries has the power to examine at any time the original informant whether designated by that term or as prosecutor or complainant, all somewhat indiscriminately used in our Regulations. It has been advanced by prisoner's counsel, that if a party be liable to punishment for perjury for depositions made before the magistrate, under the circumstances above denoted, and when that party may not adhere to information once given, the most helpless and really unoffending parties might be entrapped into the crime by the will and acts of the magistrate himself. No laws, however, can be framed to meet the possibility of those, entrusted with the high authority of magistrate, acting in the unjustifiable and unscrupulous manner assumed; and there is certainly nothing in the present case to show that the magistrate had so far lost all sense of his duty. The Regulation quoted in the remarks of

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the judges, who have sent this case to full bench are very distinct as to what are the powers of a magistrate in the course of preliminary enquiries; with which power it is certainly necessary he should be invested; and they certainly include that of examining any party on oath or affirmation who may have lodged, or initiated, information before the police, that within his, informant's knowledge a murder or homicide had occurred, whether there be a particular party charged or not.

I conceive, however, in this case there *was* a charge constructively before the magistrate against the party the prisoner had first named, when his deposition by the magistrate was commenced. When an individual wilfully goes to the police and states on solemn affirmation that a certain party has criminally caused the death of another, he has, in my opinion, set on foot a charge which continues before the magistrate, should he on hearing the recorded statement in the police before him call for the attendance of the party. In this case the prisoner had not stated to the darogah, or evinced previous to his examination by the magistrate that he wished to retract, or that he found after he made his first statements that they were not borne out. The magistrate had every ground for inferring from the record of the deposition before him as sent in by the police, that the prisoner would follow up the information he had affirmed at the thannah, and there was thus in fact a charge before the magistrate, when he put the prisoner to his affirmation preparatory to taking down his continued information. I should of course be far from saying that if the prisoner really was shown to have been entrapped or cajoled into making his statement, from which this perjury has ensued, that he could properly be found on the *evidence* guilty of the charge. There is in this case far from any symptom that he was entrapped; the consequences of his first information justly and legally, in my mind, rest on him as much as they would in the case of any party, who was suddenly called on in a civil case in the court as prescribed in Section 25, Act XIX. of 1853, to give his evidence and then was proved in that evidence to have deliberately sworn to what he then knew to be false. The public evil, for prevention of which punishment for the crime of perjury is prescribed, was equally caused in the case now before us by the acts of the prisoner, whether the gomashtah, he had first charged, was guilty or *not guilty*. We are not authorized to assume that any improper, hasty, or indiscreet acts of the magistrate entrapped the prisoner into his crime; the conclusions I form on the record are the reverse; and I would therefore find the prisoner guilty.

Mr. E. A. Samuells.—My opinion of the doctrine which I conceive to have been laid open in the case of Bullye Doss, has already been so fully set forth in the remarks with which Mr. Money and I have prefaced our reference of the case now

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before us to a full bench, that it will be unnecessary for me to allude to that case again further than to say that I have heard nothing in the course of the present argument, which has induced me to alter my view of it, and that on the grounds stated in the reference, I would consequently overrule the precedent which it established.

Before proceeding to consider one or two points in the present case, on which it seems necessary that I should make a few remarks, it may be advisable in order to prevent any misunderstanding, that I should revert for a moment to the facts of the case. It seems to have been assumed in argument, that the statement made by the prosecutor before the darogah was the false, and his subsequent statement the true one. Now I do not think that this conclusion is warranted by the facts. The deposition of the prosecutor at the thannah is remarkable for the absence of any exaggerated tone, or any attempt to connect the assault directly with his father's death. In detailing the particulars of the assault, he does not set up any case of violent or inhuman beating. He mentions only one blow, admits that his father went about his usual avocations afterwards, does not disguise his previous illness, and gives the particulars of his death very much as the witnesses and the darogah himself have done. According to my experience, this is not the course which the natives of this country pursue, when they set up a false case for the purpose of injuring an enemy; and I cannot but think that if the prisoner had determined on making a false charge, he would have come prepared with false evidence to support it. It is true he charged the gomashtah, who had ordered the assault, with murder, stating his belief that the assault had led to his father's death; but he may very honestly have entertained that belief, though it is certain now that it was an erroneous one. I see no reason whatever to doubt the facts of the assault, and of the father's death, which were the only facts sworn to by the prisoner before the darogah, and I believe this to be one of those cases unfortunately so frequent in this country where the prosecutor makes a true statement to the darogah, immediately after the commission of the offence, and is subsequently persuaded or intimidated by those interested in *hushing* up the case, into denying his mofussil deposition when he is examined before the magistrate. Had the prisoner therefore been charged with perjury, as it is suggested he ought to have been on his deposition before the darogah, I should certainly have felt it my duty to acquit him.

There is another circumstance, which has, I think, been somewhat misunderstood, to which also I must shortly allude; the prosecutor (prisoner) was sent by the darogah to the magistrate upon the written order of the latter and without any formal summons. It seems to be supposed that this was a lawless pro-

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ceeding peculiar to this country; in fact it appears to be precisely the same course as that adopted by the police in England, and, I presume, in all other countries. If the commissioners of police, or the inspector think a case ought to be sent before the magistrate, he directs the constable to take or send the prose cutor and the witnesses before the magistrate, and a summons is only applied for in the case of unwilling witnesses. I do not see that there is any allegation in this case of the prosecutor having been subjected to duress or other improper treatment. And indeed the magistrate up to the time when the prosecutor denied the statement he had made at the thannah, must have been under the impression that he was a perfectly willing witness. Section 32, Act II. of 1856, has no bearing on this case, as the witness has not been compelled to answer any question, which he objected to on the ground that it would criminate himself. There seem therefore to be only two points of law in this case on which it is necessary I should add any thing to the remarks which Mr. Money and I have already recorded; the first is, whether the magistrate in order to avoid compelling the prosecutor to perjure himself, was not bound to ascertain from him, before putting him on his oath, whether he intended to adhere to the charges he had made at the thannah or not, the second, whether as the prosecutor in his deposition before the magistrate virtually withdrew the charge he had made before the police by setting up an opposite state of facts, there was any issue before the magistrate which could give him jurisdiction. With regard to the first point there have, I observe, been several decisions in this Court, during the years 1854 and 1855, which seem to favor the idea that a prosecutor ought not to be sworn, if the magistrate has reason to believe that he will involve himself in the guilt of perjury by contradicting his previous depositions. I cannot discover, however, that any of these decisions contain such an exposition of the principle on which they are founded, as is usual in cases which are intended to serve as precedents; and it would be unsafe therefore to regard them as having any general application.

They are all extremely curt; and it is reasonable to suppose that like the case of Sheebdyal Dhanook, 25th June, 1847, to which one of these refers, they depend on special circumstances which have not been clearly set forth. Any general rule of the kind referred to would, I think, proceed upon a misconception of the nature and objects of a magistrate's duties. When the magistrate, as in this case, is sitting on an inquest to determine in what way a particular individual came by his death, and whether grounds exist for bringing any one to trial for the murder of the deceased, he is engaged in the performance, as it seems to me, of a solemn duty to the public, and has no concern with the private feelings or wishes of any person, who may

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be brought before him to depose to the facts of the case. If because he had been made aware that the person in the witness-box had already charged another on oath with the murder of the deceased, and now wished to withdraw the accusation, he should abstain from examining him, lest he might deny his previous statements and so incur the penalties of perjury, he would, in my opinion, be guilty of a gross dereliction of duty; for it is obvious that the man who has made such a statement must be a most natural witness; and that there can be no satisfactory finding on the issue before the magistrate, if his deposition be not taken; in addition to which the magistrate may reasonably hope, that whatever be the witness's present intentions, the "terrors of the oath," to use the phrase of a writer on criminal law, will compel him to speak the truth. A witness, (and a prosecutor in a heinous case is to all intents and purposes a witness) is sworn to speak the truth and nothing but the truth; and if after this solemn warning, he chooses to perjure himself, it is certainly not the magistrate who puts the rope round his neck, but the witness who becomes his own executioner. There are no doubt cases such as that of Sheebdyal Dhanook to which I have already referred, in which it is unnecessary for the purposes of public justice to put the prosecutor a second time on his oath and when the perjury is patent on the first deposition; but this is not one of these. Here the magistrate believed that the prosecutor's first deposition was true; and under these circumstances his duty, as a public officer, obviously required that he should re-examine him. These are not mere speculative opinions. This very point was raised in this Court, in the case of Nubeen Bhur Tantee November 26th, 1852, and decided by a very excellent judge, Mr. A. J. M. Mills; and the case of Rajaram Mundul decided by Mr. Mytton on the 22nd April, 1852, raised the same question. In the former case, the prisoner deposed on oath before a deputy collector to the ownership of particular lands. He subsequently presented a petition stating facts at variance with his deposition, and in reply to a question put to him by the deputy collector, declared that his former statement was false. The deputy collector then considering, we must suppose, that any fresh statement the witness had to make must, in justice to the party whose claims he had previously supported, be made under the sanction of an oath in the same manner as the first statement, re-examined him on oath as to the facts; and finding that his first and second depositions contradicted each other on a material point, committed him to the sessions. The sessions judge (Mr. Bentall,) was of opinion that "as the prisoner came forward of his own accord to make a confession of his guilt, it was erroneous to take his deposition on solemn declaration, and consequently the prisoner should be released." Mr. Mills, in concurrence with the *futwa*

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of the law officer, overruled this objection, convicted the prisoner and sentenced him to one year's imprisonment, observing that "there was nothing objectionable in his (the deputy collector's) re-examining the prisoner on oath as to his knowledge of the facts as they had really taken place and as he had voluntarily stated them to be in his petition." "It was as probable," he remarked, "that the prisoner might have been induced to come forward and deny his first deposition, which was the true one, as that he may have been suborned to swear falsely in the first instance." In the other case, which was one of dacoity, the prisoner (a prosecutor) who had charged certain parties on oath with the commission of the dacoity, declared to a darogah who was sent to reinvestigate the case, that his first statement was false and that no dacoity had taken place; but the magistrate disbelieving this story sent for him and examined him on oath, and as he persisted in contradicting his first depositions committed him for perjury and he had sentence of three years' imprisonment from this Court, the judge (Mr. Mytton) remarking that "whichever of his two statements was true, he had committed a serious offence against the administration of justice and police." These appear to me to be sound decisions. It is clear that the committing officer could not have omitted to re-examine the prisoners without, in the one case, doing an injustice to one of the parties in the suit, and in the other case sacrificing the public interests committed to his charge, one of the parties in the case. I have thought it necessary to quote these cases at some length in order to show that even in cases where the magistrate has every reason to suppose that the witness is about to perjure himself, it is his duty to examine him. In the particular case now before us, however, it must be remembered that the magistrate had no such knowledge; and I am not aware of any law, practice or precedent, which requires a magistrate, under such circumstances, to abstain from putting a prosecutor upon his oath until he has interrogated him to ascertain whether he is not going to perjure himself. This being the case, we should not, I conceive, be justified, as judges bound to administer the law as it stands, in holding that any such omission could deprive the magistrate of his jurisdiction or purge the prisoner of his perjury.

Mr. Money and I have already entered so fully in our reference of this case into the question whether a charge on oath is, or is not, necessary to give a magistrate in this country jurisdiction, that I need only very briefly allude to it here. It is admitted that there was a charge on record in the magistrate's Court when he commenced the prisoner's deposition, and that as a necessary consequence the magistrate was competent to put the prisoner on his oath. The question which arises then, as I understand it, is whether, as the prisoner made no charge before

the magistrate in the deposition which followed, the oath which he then took, will support a charge of perjury. It might be a sufficient answer to this to say that the information contained in the prisoner's thannah deposition was "credible information," such as would give the magistrate *primâ facie* personal knowledge of the commission of a crime; and that this being the case, the law gives the magistrate authority to proceed without a charge; but even had a charge been essential under the law, it appears to me that the prior information, laid before a competent officer, was a sufficient foundation for the magistrate's jurisdiction; and that the subsequent withdrawal of the charge contained in that information, or rather the subsequent oath to a state of facts at variance with that information, cannot, in any way, be said to nullify the information, or to leave the magistrate with no issue before him, which he has authority to try. I certainly do not find any such doctrine in the law of England, although under that law an information on oath is absolutely necessary to give the magistrate authority to examine witnesses, I apprehend there can be no doubt that under the English law, if a prosecutor lays a charge of murder on oath before a coroner or a justice of the peace, or before a commissioner of police vested with the powers of a justice for police purposes, and subsequently goes before the grand jury or before another justice and swears to a totally opposite state of facts to that which he had before deposed to, he may be punished for perjury. I can find no foundation for the idea that the grand jury or the justice would have no jurisdiction such as would enable them to assign perjury, because the prosecutor did not persist in his original charge before them. The case, it is obvious, is not altered by the circumstance of the officer before whom the information was originally laid being called a darogah, and being in a subordinate position to the magistrate; for as far as regards the taking of information in heinous offences upon oath, the darogah is just as competent an officer as the justice of the peace or the coroner. The law in this country in those petty cases, where a charge is by law requisite, is precisely the same in principle as that which I have said, I apprehend, to be the law of England; although owing to the difference between our law and that of England on the subject of the sufficiency for conviction of contradictory depositions, the perjury might probably be assigned in a different form. The case of Bycuntnath Bhuttacharj is an example of the way in which this class of cases is dealt within our courts. In that case which was tried before Mr. Mills, (judge,) on the 7th January, 1853, the prisoner charged a man on oath before the magistrate with having assaulted him. He subsequently deposed before the deputy magistrate, to whom the case had been sent for trial, that he had not been assaulted and that he had made his pre-

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vious charge at the instigation of certain mookhtears. He was convicted of perjury on his contradictory depositions, and had three years' imprisonment. Of our practice up to the present time in heinous offences with regard to this matter of jurisdiction the case of Rajaram Mundul, which I have cited above, affords ample proof; and I am not aware that any precedent can be produced which lays down a contrary doctrine on this point. It has always been held in our courts that when the prosecution of a heinous crime is once taken up by the public authorities, the private party ceases to have any power over it whatsoever; that he may be compelled, however unwilling to give his evidence; and that he may be tried and punished for perjury, if he swears falsely, and with deliberation to a material point, whether he persists in his original charge or not. This has, to all appearances, been the uniform practice of our courts ever since they were established on their present footing, and we should, in my opinion, set up a very dangerous precedent if we were to set it aside on account of a technical subtlety; which, whether logical or illogical, is not based on any principle of substantial justice; and would, in consequence, be quite incomprehensible to the mass of the population. There is no more common form of perjury in this country than that exhibited in the present case, and there is none more mischievous or fraught with more serious consequences to the administration of criminal justice. It matters little whether the prisoner's first or his second deposition be the false one. If the first, he has falsely accused an innocent man of the crime of murder; if the second, he has colluded with the criminal to defeat the ends of justice. It is difficult to say which is the more serious offence. I would convict the prisoner and sentence him to three years' imprisonment with labor in irons.

Resolution directing the release of the prisoner, Baboollah Khan, charged with perjury.—(Present: Messrs. H. T. Raikes, A. Sconce and C. B. Trevor.)

Though it has been ruled by the majority of this Court, that the precedent, in the case of Bullye Doss, is not binding against a conviction for perjury, the result of the judgments now recorded in this case is, that the prisoner, Baboollah, has been acquitted of the crimes laid to his charge by a majority of the presiding judges, and it is therefore ordered that he be immediately released.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

ENATOOLLAH SHEIKH.

24-Pergunnahs.

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Case of ENATOOLLAH SHEIKH.

Appeal against conviction of perjury, rejected.

CRIME CHARGED.—Wilful perjury in having, on the 5th May, 1856, stated on solemn declaration taken instead of an oath, before Baboo Nilmony Mitter, deputy magistrate invested with the full powers of magistrate, that on the night of the 2nd Boisack, at about 7 or 8 o'clock P. M. hearing a noise in the mango garden of Dyem Mondul, he proceeded thither and saw that, by the orders of Shumboo Doss, Gogun Mondul and Bissonath Mondul, the following individuals, Lokenath Khan, Pana Khan, Buddinath Koomar, Issur Koomar, Muddun Mochee, Niloo Mondul and Hulludhur Mondul, were cutting down the house of Dyem Mondul and taking it away, and again on the 3rd June, 1856, in having stated, on solemn declaration taken instead of an oath before the same officer, that he (the prisoner) did not see the cutting down of the house but merely heard of it. Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Baboo Nilmony Mitter, deputy magistrate of Baraset.

Tried before Mr. G. D. Wilkins, additional sessions judge of the 24-Pergunnahs, on the 7th August, 1856.

Remarks by the additional sessions judge.—In a case in which one Shumboo Doss was convicted and punished by the joint-magistrate of Baraset, on 30th June last, on a charge of plundering, &c., (the conviction having since been upheld on appeal) the prisoner in the calendar gave evidence before the apprehension of the said Shumboo Doss, viz., on 5th May, 1856, that he had seen him commit the act of violence he was charged with. On the prisoner, Shumboo Doss, appearing, he expressed a wish, before entering on his defence, to cross-examine the prisoner in this calendar regarding his previous evidence. This was very properly complied with on 3rd June, 1856, and then the prisoner replied, distinctly and expressly, that he had not seen but had only heard what he had before declared he had personally witnessed. Prisoner's defence before me now is, that he *did* see what occurred, and that he was unwell when he made his subsequent contradictory statement on the 3rd June.

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The law officer convicts, and I concur, and sentence the prisoner to three years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) There is no reason to interfere with the conviction in this case. Prisoner's appeal rejected.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

RAMKANAI GHOSE, (No. 2,) AND SHEEBCHUNDER ROY, (No. 3.)

Mymensingh.

1856.

December 5.

Case of RAMKANAI GHOSE and another.

Appeal rejected.

CRIME CHARGED.—1st count, forging a word in the copy of a document which had been officially attested by the deputy magistrate of Serajgunge; 2nd count, knowingly uttering above-forged document.

CRIME ESTABLISHED.—Forgery and knowingly uttering forged document.

Committing Officer.—Mr. W. Cockburn, deputy magistrate of Jumalpore.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 15th September, 1856.

Remarks by the sessions judge.—It appears that one Ramlochun Ghose, obtained a decree against Nobokishen Dey Bhoomic and others in 1836, in the moonsiff's court at Pingnah, and prisoner No. 2, son of the original decree-holder, sued out execution of the same; on a notice being served upon the debtors, they objected to the execution on the ground of limitation and also pleaded payment to the prisoner's father. To refute the plea of limitation, prisoner No. 2, filed an attested copy of an *urzee* from a police report from the Serajgunge joint-magistrate's court to shew that his father died in 1250, B. S., and that in consequence the law of limitation did not apply, as he obtained his majority in 1260, B. S., but the moonsiff suspecting its authenticity owing to a part of it being washed out sent for the original from the joint-magistrate's court and found that the word "*mirto*" or "deceased" which preceded the name of Ramlochun Ghose, in the copy, was a forgery and accordingly forwarded the proceedings to the magistrate for investigation. The magistrate, however, referred the case to the deputy magistrate of Jumalpore, the forgery having occurred in his jurisdiction and that officer committed the prisoners to this court for trial.

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Before the deputy magistrate, the prisoners denied the charge, No. 2, stated that his cousin, No. 3, sent him the copy to file in the moonsiff's court, which he did; that there appeared an erasure in the copy when he received it, but as prisoner No. 3, was a near relation and a wellwisher of his, he had no reason to suspect its genuineness. Prisoner No. 3, urged that the copy was given to him by Kalleekinkur Roy, a "*nukul novis*" of the joint-magistrate's court in its present state, but as he attached no suspicion to its authenticity, he gave it to No. 2, to file. In this court, the prisoners adhered to their denial, and No. 3, repeated the defence he made in the lower court and relied on the defence made by No. 2, who added that he fully proved that his father died in 1250, B. S. of which the moonsiff was also of opinion and ordered the execution of the decree to proceed; that there was no proof of his having forged the copy consequently the charge of having knowingly uttered it, cannot stand; that the "*nukul novis*" made over the copy to prisoner No. 3, in its present state; that prisoner No. 3 applied for a copy of the thannah jemadar's report, which was ordered to be given; but the "*nukul novis*" gave a copy of the darogah's report; that a stamp paper bearing the date of purchase, viz. the 8th December, 1854, has been filed, while the *nukul novis* by mistake recorded the date of its receipt to be the 9th December, 1845, and the date of delivery is stated to have been the 11th July, 1854, and consequently the *nukul novis* must have made the erasure in collusion with the debtors; lastly, that the deputy magistrate at first only committed him on a charge of forgery, but that he subsequently added another charge against him of knowingly uttering a forged document.

The law officer convicts the prisoners on both counts on violent presumption. I concur in this finding. It is clear from an inspection of the attested copy of the above-mentioned document filed by the prisoner, No. 2, that the word "*mirto*" or "deceased" has been inserted in it after something had been erased or washed out, and on comparing it with the original of which it is a copy, I find that the word "*mirto*" preceding the name of Ramlochun Ghose, is not to be found in it, and it has been clearly deposed to by the omlah and *nukul novis* of the joint-magistrate's court, that when they compared the copy the word "*mirto*" was not in it or at the time of its delivery to prisoner No. 3. It is therefore fairly presumable that the prisoners together commited the forgery and uttered the forged document with a guilty knowledge to serve their own purposes. Prisoner No. 2, has called a few witnesses to prove that he received the documents from No. 3, in its present state and both of them endeavour to throw the blame on the *nukul novis*, who delivered the copy, but I have to remark that no one could have been benefited by the forgery save the prisoners, and that

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they consequently must have committed it; further, if they had not any knowledge of the copy being a forged document, No. 2 would have shrunk from filing it when his vakeel refused to do so, owing to its suspicious appearance.

The prisoner No. 2 also urges that the deputy magistrate committed him on a charge of forgery only and that in the calendar he added another charge against him, but I remark that when the calendar is correct, the irregularity pointed out by him is of no avail. Under the above circumstances, I convict the prisoners of forgery and knowingly uttering a forged document, and sentence them to be imprisoned without irons for the period of three (3) years and to pay a fine of 100 Rupees each, or in default, to labor until the fine be paid or the period of sentence expires.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton) The prisoners have appealed, but we see no reason to differ from the view taken by the sessions judge.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

MOTEEOOLLAH.

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Case of MOTEEOOLLAH.

The appeal of prisoner convicted of forgery was rejected.

CRIME CHARGED.—1st count, forgery in having with intent to defraud witness, No. 1, and his brother, Amjud Alli, forged or caused to be forged a bond or *suddaputtro* for Co.'s Rupees 49, dated 5th Kartick, 1213, M. S., and thereupon fraudulently affixed or caused to be affixed the names of witness, No. 1, and his brother, Amjud Alli; 2nd count, fraudulently issuing and publishing as true a bond or *suddaputtro* for Co.'s Rupees 49, dated 5th Kartick, 1213, M. S., knowing the same to be false and fabricated; 3rd count, forgery in having with intent to defraud witness, No. 1, and his brother, Amjud Alli, fraudulently prepared or caused to be prepared a false document as a bond or *suddaputtro* for Co.'s Rupees 49, purporting to be signed by witness, No. 1, and his brother, Amjud Alli.

CRIME ESTABLISHED.—Forgery and fraudulently issuing and publishing as true a false and fabricated deed, knowing the same to be false and fabricated.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 19th August, 1856.

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Case of Moteeoollah.

Remarks by the additional sessions judge.—That the paper, marked A, filed with the record, which purports to be a deed called in the vernacular সদায় পত্র, and bears date the 5th Kartick, 1213, M. S., was a forged instrument was shewn by the testimony of one of the parties represented to have made it, and of four of the persons whose names are subscribed as witnesses thereto.

This testimony was corroborated by the depositions of two persons, one of whom affirmed the absence from the district during all the year in which the paper is dated, of the persons represented to have made it, while the other declared that they left the district two years before and returned to it two years after that year.

A further corroboration was offered by the one person before the court, who is represented to have made the deed, having subscribed his deposition with his signature under his own hand, while the paper in question purports to have been signed in his behalf by another person. That the forged paper was issued and published as true by the prisoner No. 7, Moteeoollah, was established by the evidence of the vakeel to whom he delivered it to be filed as an exhibit in a suit before the moonsiff of Zorwargunge. That the issue and publication were fraudulent was obvious from the fact that the forged paper was exhibited as the principal documentary evidence in support of a suit instituted by the prisoner No. 6, Amjud Alli, through the intervention of the pleader above referred to against the parties whose signatures to the paper were forged.

That the prisoner No. 7, Moteeoollah, forged the instrument or procured its forgery was presumed from the facts that he issued and published it; that he delivered to the pleader the *ikhtearnamah,* by virtue of which, the latter instituted the suit above mentioned and exhibited the forged paper, and that the witness whose name was forged as making the deed has named this prisoner as the author of the forgery and has not attributed it to his son, the prisoner No. 6, Amjud Alli, in whose favor the instrument purports to be made. On the evidence and presumption stated, the defence, that the paper in question was a genuine instrument, was discredited, and the court concurred with the majority of the jury in convicting the prisoner.

Sentence passed by the lower court.—Imprisonment for four years with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner in his petition of appeal maintains the genuineness of the transaction and denies that any forgery was committed. We see no reason to doubt the evidence for the prosecution, the truth of which is corroborated by the presumptions which arise in the case. Prisoner's appeal is rejected.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT AND NUBBOO

versus

HOSSEIN.

Tipperah.

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Case of
HOSSEIN.

Appeal rejected his pleas in defence varied and defence was not substantiated.

CRIME CHARGED.—1st count, burglariously entering the prosecutor's house and stealing therefrom property to the value of 1 R. 1 A. 6 P. attended with severe wounding of the prosecutor's brother; 2nd count, theft of property of the value of 1 R. 1 A. 6 P. from the prosecutor's house attended with severe wounding of prosecutor's brother; 3rd count, attempt to steal in prosecutor's house attended with wounding as aforesaid.

CRIME ESTABLISHED.—Burglariously entering the house of the prosecutor Nubboo and stealing therefrom property to the value of 1 R. 1 A. 6 P. attended with severe wounding of the prosecutor's brother.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 15th September, 1856.

Remarks by the sessions judge.—The prisoner effected a burglarious entry into the prosecutor's house at about 2 A. M. of the 8th August, by undoing or cutting the rope which fastened the door. The prosecutor's brother first awoke and seized the prisoner, who struggled with and wounded him very severely. The prosecutor coming to his brother's assistance also received two wounds, but extremely slight ones, on the right thumb and behind the left ear. The prisoner was, however, successfully captured with his *dâo* in his hand, and it is said, a *lota* and small basket belonging to the prosecutor in his possession.

The prisoner pleads *not guilty.*

No. 1, Abboo.

The wounded brother who first awoke and first seized the prisoner was the sole witness to the fact. He seems to have been seriously injured on the left shoulder on which were two wounds in the shape of a cross, one penetrating deeply and the other being less important. The former might, in Doctor Williams's opinion, have proved fatal, had it extended a little deeper as it might then have injured the pleura and lung, or by causing inflammation of those parts might have ended fatally. The witness is now evidently doing well although still an inmate of the Charity Hospital.

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The witnesses named in the margin,* are the prosecutor's immediate neighbours, who being awakened by his and his wife's outcries hastened to the spot and found in the verandah the prisoner captured and the prosecutor and his brother bleeding from wounds inflicted, they were told, by the prisoner with the *dâo* at hand which most of them recognised as being the prisoner's property.

* No. 5, Ruffee Mahomed.
„ 6, Titah Gazi.
„ 7, Akbur.
„ 9, Pocha Gazi.
„ 13, Anyet Gazi.

The prisoner's defence in the magistrate's court was alike flimsy and incredible. He stated that he had applied to the prosecutor for a loan of two annas to be repaid either by labor or by two annas' worth of paddy, and that the prosecutor having invited him to his house to receive the money he had accordingly gone thither at 7 o'clock in the evening, when the prosecutor and his brother seized and bound him and then burnt his face. To explain the circumstance of his *dâo* being found in the prosecutor's house he stated that it was in pledge for a previous loan of four annas. This statement is entirely opposed to probability as well as to the evidence of the witnesses for the prosecution, who found him at the prosecutor's house at 2 o'clock in the morning instead of at 7 o'clock in the evening under circumstances which corroborate the prosecutor's statement of the cause of his seizure and of the serious injuries, that one of them, at least, had received at his hands. There can, moreover, be no doubt that the trifling burns on the prisoner's face occurred in the course of the struggle to detain him, and were not purposely inflicted by his captors.

His defence in the sessions court was in the main similar to his defence before the magistrate, though differing slightly in details. It was to an equal extent incredible and left in the same obscurity the circumstances under which the prosecutor's brother was so severely and even dangerously wounded. He called two witnesses to speak to his character, one of whom, his brother-in-law, described him as a *latteal* already imprisoned for riot. The other had not seen or heard of him for eleven years, and seemed to know nothing about him except that he has already been once imprisoned for violence of some kind, not adverted to by the magistrate.

The Mahomedan law officer convicted him on the 1st count, of the indictment and pronounced him liable to *tazeer*.

Adverting to the very serious nature of the wounds inflicted by the prisoner on the prosecutor's brother, and to his evident violence of character and conduct, I sentence him to ten years' imprisonment with labor in irons. I think that the charge should have included wounding, though slightly, the prosecutor also.

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Case of HOSSEIN.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner has urged in his petition of appeal a different plea from what he put forward in the sessions court. It is apparent, therefore, that he has no good defence, nor do his witnesses prove any thing in his favor. There is no reason to distrust the evidence for the prosecution; the prisoner's appeal is rejected.

PRESENT:

B. T. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND RAMKANT MALLOW

versus

SOMEEAH (No. 4,) SHEIKH ESOFF (No. 5,) AND SHEIKH AZMUT (No. 6.)

Mymensingh.

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Case of SOMEEAH and others.

The appeal of prisoners, convicted of riot attended with culpable homicide, rejected.

CRIME CHARGED.—Riot attended with the murder of Lukhun Mallow and the wounding of Jameer and Muddooram.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Lukhun Mallow.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 13th September, 1856.

Remarks by the sessions judge.—The circumstances of this case as elicited from the evidence recorded on the trial are these.

There existed a dispute between Bhoobun Moi Debea and Deenonath Bhuttacharge and others regarding some lands, when the adherents of the former, from 150 to 175 in number, attempted on the 21st Maug last, at about one *puhur* of the day remaining, by force to cut and carry off the crop belonging to the ryots of the latter and as the deceased Lukhun and the wounded men Jameer and Muddooram and others remonstrated, prisoner No. 6, and Gourchunder Naib and others ordered them to be beaten, when they ran for shelter to the house of one Madaw which the rioters attacked and prisoner No. 4, inflicted a blow with a *lattee* on Muddooram's head and Rohomut and Chooloo (not apprehended) wounded Jameer on the loins and Azee Mahomed on the back, and the said Chooloo wounded the deceased close to his private parts on the left side with a spear which felled him to the ground, that the assailants afterwards carried Jameer and Muddooram to Bhoobun Moi Debea's cutcherry and detained them in several places successively until released by the police burkundaze from the house of one Bhollah Gazi; Lukhun Mallow was taken to his house from

a grass field where he was then lying wounded by his brother, the prosecutor, after the assailants had gone away, and he died seven days afterwards from the effects of the injury he received.

The civil assistant surgeon, Doctor Bellew, deposes that death appeared to have been caused by an injury to the testicles and the abdomen. That the injury below the testicles which appeared to have been produced by a pointed instrument extended a considerable distance, but owing to the decomposed state of the parts he could not ascertain exactly whether the wound had injured any vital organ, and that there were also marks of blows on other parts of the deceased's body especially in the abdomen. With regard to the injuries received by Muddooram and Jameer, he stated that he found a scar in the head of the former, apparently produced by a blow from a *lattee*, and that the latter had a contusion on the left hip probably produced from a blow from a stick; that these were not of a serious character, although they might have been severe at the time.

The prisoner denied the charge both before the police and the magistrate. They adhered to their denial in this court. No. 4, impugns the evidence for the prosecution pointing out certain discrepancies in it, and urges that he has been implicated in the matter by Kashee Roy and others owing to enmity existing between them and Bhoobun Moi Debea, he being a ryot of the latter; that on the day charged he was absent at Bolakeer-chur, where he was engaged in ploughing and tending his cattle the whole day. Nos. 5 and 6, relied on the statement made by No. 4, for their defence and No. 5, added that on the day of occurrence he went to one Annund Pyke, at Bashgarree-chur, to return the bullock which he had purchased from him on the day preceding at Benaber Haut and returned at about one *puhur* after nightfall; No. 6 pleaded that since Maug last he was confined to his house by a severe attack of rheumatism and that since last Assin, he has been at enmity with Gopal Mohurrir.

The law officer finds the prisoners guilty of riot attended with the homicide of Lukhun Mallow and the wounding of Jameer and Muddooram, and in which finding I concur.

The evidence in this case, I have to remark, is quite clear and conclusive as to the prisoner's guilt; it has been clearly proved in the evidence of the wounded men and eye-witnesses that the prisoners were present, aiding and abetting in the riot, and Nos. 4 and 5, took an active part in it and that No. 6, ordered the assault and they, the witnesses, also point out the prisoners before me as being those whom they before named. The assault was of a very aggravated nature which ended in the death of one person and the wounding of others. The pleas advanced by the prisoner are, in my opinion, quite insufficient to exonerate them from the charge and almost all the witnesses named by

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them are, I observe, ryots of their landlady. Some of the witnesses examined by prisoner No. 4, deposed to having seen him on the morning of the 21st or 22nd Maugh last, at the place named by him, but I remark that the occurrence took place in the afternoon and the pleas advanced by prisoners Nos. 5 and 6, are not sufficiently borne out by the evidence of their witnesses, and which is, moreover, discrepant and unworthy of credit. On the above grounds, I convict the prisoner of riot attended with the homicide of Lukhun Mallow and the wounding of Jameer and Muddooram, and sentence them each to be imprisoned with labor and irons for the period of seven years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoners' defence is not at all born out by their witnesses, who do not speak with any certainty as to the dates on which they were at the places they respectively name. Seeing no reason to impugn the evidence for the prosecution, as detailed by the sessions judge, we reject the appeal of the prisoners.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

SHYMACHURN MOOKERJEA (No. 3,) HURRISHCHUNDER MOOKERJEA (No. 4,) TARRACHAND MITTER (No. 5,) BUNGSHEE BAGDEE (No 6,) MODHOO BAGDEE (No. 7,) GUNGANARAIN GHOSAUL (No. 8,) MOHESH ROY (No. 9,) GOOROOPERSHAD SURDAR (No. 11,) CALEE CHOWDREE (No. 12,) GOYARAM GHOSE (No. 13,) CANTO NAIK (No. 14,) PELARAM COLIA (No. 15,) AND RAMCHURN CHUCKERBUTTY (No. 16.)

Hooghly.

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Case of SHYMACHURN MOOKERJEA and others.

Conviction of perjury reversed in appeal.

CRIME CHARGED.—No. 3, perjury, in having on the 8th January, 1856, deposed on solemn affirmation before the deputy magistrate of Jehanabad, that his wife's name was Kadumbinee Dabee; that the *said* Kadumbinee, being the prosecutrix of a highway robbery case, was proceeding with him from Gungadaspore to Hooghly; that on her way to Hooghly, when she arrived at his house at Dundeepore, she was attacked with cholera and died there, and that *he* carried her corpse to the place of cremation in the company of prisoner No. 4, and others and there burnt it; such deposition being wilfully and deliberately false on a point material to the issue of the case. No. 4, perjury

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facts regarding which perjury was charged were not relevant to any issue judicially before committing officer. Certain omissions of the sessions judge at the trial noticed, as well as the proceedings of the deputy magistrate in his investigation.

in having on the 4th January, 1856, deposed on solemn affirmation before the deputy magistrate of Jehanabad, that Kadumbinee Dabee, the wife of prisoner No. 3, who was the prosecutrix in the highway robbery case was attacked with cholera, on the 15th Aughun, and died on the night of the following day at Dundeepore, and that he carried the dead body of the said Kadumbinee to a tank in the company of prisoner No. 3, and others for the purpose of cremation and there burnt it; such deposition being wilfully and deliberately false on a point material to the issue of the case. No. 5, perjury, in having on the 26th January, 1856, deposed on solemn affirmation before the deputy magistrate of Jehanabad, that a declaration was made in his presence by the prosecutrix, (Kadumbinee Dabee) in the highway robbery case of Dhununjoy Chobay, before the darogah of Chunderconah, whilst he knew well that the said declaration was *not* made by the prosecutrix *Kadumbinee*, *but* by Mongola Dabee, (prisoner No. 1,) under the false name of "Kadumbinee;" such deposition being therefore wilfully and deliberately false on the point material to the issue of the case. No. 6, perjury, in having on the 13th November, 1855, deposed on solemn affirmation before the magistrate of Hooghly, that he had heard of a native of the North Western Provinces, robbing one day one *bala* and two *doomreas* from the person of the prosecutrix, "Kadumbinee," that he knew and identified the said (silver and gold) ornaments to belong to the said "*Kadumbinee*," and that he knew the *prosecutrix*, Kadumbinee; such deposition being wilfully and deliberately false on a point material to the issue of the case. No. 7, perjury, in having on the 13th November, 1855, deposed on solemn affirmation before the magistrate of Hooghly, that a native of the North Western Provinces, had been caught after robbing ornaments from the person of the prosecutrix, Kadumbinee; that on the said up-countryman being arrested, he saw the golden *doomrea* and silver *bala*, (produced in court) fall from his cloth to the ground; that he had seen ornaments of a similar description being on the person of Kadumbinee, and that he knew the prosecutrix, Kadumbinee; such deposition being wilfully and deliberately false on a point material to the issue of the case. Nos. 8 and 9, perjury, in having on the 26th December, 1855, deposed on solemn affirmation before the deputy magistrate of Jehanabad, that they previously knew Kadumbinee, the wife of prisoner No. 3; that her husband brought her on 15th Aughun, from Gungadaspore, to his own house, at Dundeepore, for the purpose of carrying her to Hooghly; that she was there attacked with cholera, and died on the night of the following day, and that they saw her dead body, being carried for the performance of the funeral rites; such deposition being wilfully and deliberately false on a point material to the issue of the case. Nos. 11 to 15, perjury, in

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prisoners Nos. 11 and 12, having on the 4th, and prisoner No. 13, on the 5th, and prisoners Nos. 14 and 15, on the 8th April, 1856, deposed on solemn affirmation before the deputy magistrate of Jehanabad, that a wife of prisoner No. 3, named Kadumbinee, of Gungadaspore, who was the prosecutrix in a highway robbery case, had come from her own to her husband's house, at Dundeepore, on a certain date where she died and they heard of it, and were sure of its truth, and on being confronted in the court with Mongola Dabee (prisoner No. 1,) the wife of prisoner No. 3, the daughter of Ramjee Chuckerbutty and elder sister of Kadumbinee Dabee of Gungadaspore, in having deposed that they knew her from her very childhood that she was the daughter of one Kali Chatterjea of the eastern districts of Bengal and Rajeshurry of Dundeepore, the prisoners Nos. 11 and 13 to 15, having further stated that her maternal uncle was Ramkrishna Chuckerbutty of Dundeepore, and prisoners Nos. 11, 14 and 15, having, moreover, deposed that her maternal grandfather was Kebulram Chuckerbutty of the same village; such depositions being wilfully and deliberately false on a point material to the issue of the case. No. 16, perjury in having on the 14th April, 1856, deposed on solemn affirmation before the deputy magistrate of Jehanabad that he did *not know nor* hear that Ramjee Chuckerbutty of Gungadaspore, had any *other* daughter of the name of Kadumbinee or any other name except (the prisoner No. 1,) Mongola Dabee then present in court, and having again on the 16th April, 1856, on being confronted with Kadumbinee Dabee the sister of Mongola and the younger daughter of Ramjee Chuckerbutty of Gungadaspore deposed on solemn affirmation before the said deputy magistrate that he *knew* the said Kadumbinee all along to be the younger daughter of the said Ramjee Chuckerbutty one of these depositions being wilfully and deliberately false and both being contradictory of one another on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Moulvee Abdool Luteef, deputy magistrate of Jehanabad.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 25th July, 1856.

Remarks by the additional sessions judge.—The history of this case and the way in which it was gradually brought to light has been given by the deputy magistrate at great length and with much perspicuity. It would have been better perhaps if the prisoners had been charged with "conspiracy and perjury." There is not the shadow of a doubt that the first prisoner is the daughter of Ramjee Chuckerbutty of Gungadaspore; that the second prisoner Audoormoney is her mother, and the witness Kadumbinee her sister, and that the whole

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affair originated in the first prisoner Mongola in the first instance giving information to the police under her child sister's name, and then on her person and appearance being known, being spirited away by her husband, the prisoner Shymachurn and his friends, to avoid a public appearance as a prosecutrix, a false report being given out of her death, and to support this report, her pretence, when found out, of being another Mongola, not the daughter of the late Ramjee Chuckerbutty of Gungadaspore. All this is proved, not merely by the confessions of the chief actors in the affair, and the unimpeachable evidence of the Gungadaspore witnesses Nos. 3 to 6 and 26 to 32, but by two other circumstances. Mongola named exactly the same witnesses (being residents of Gungadaspore,) that the mother did, though at one time professing not to belong to that village, and if not the daughter of Ramjee Chuckerbutty, deceased, and the prisoner Audoormoney, how came she to be at Gungadaspore, without her husband on the 2nd November, 1855? The child Kadumbinee, witness No. 30, was unable from the excitement of meeting her mother, the second prisoner, to repeat before me the story she told in the lower court, but the second prisoner Audoormoney, admits the witness Ramtaruk No. 29, is this child's husband, and *he* says the little thing's name *is* Kadumbinee, and that the *prisoner Mongola is his sister-in-law*.

It is not quite clear to me whether or not the prisoner Mongola and the two little girls who were with her bathing in the secluded tank of Gungadaspore, on the 2nd November last, were really or only fancied themselves insulted by the stranger Dhununjoy Chobey; but it is perfectly clear that this person's being a Brahmin as well as the prisoners, and, moreover, attached to the service of a neighbouring wealthy mahajun, was the cause of the prisoners and their friends to save themselves, transmitting to the thannah a false charge against him of highway robbery. This charge was so well supported in the mofussil investigation that the darogah reported it to be proved, and then the magistrate was justified in requiring the female prosecutrix, though a Coolin Brahminee, to appear in person to prosecute and identify the person she charged with having felloniously robbed her in a secluded place of the ornaments on her person. Under other circumstances (Regulation IX. 1793, Sec. 48,) the presence of the prosecutrix would not have been insisted on, and all that resulted from the order for her appearance would have been so far excusable that the law of perjury could not have been put in force.

The law officer and I consider the prisoners Mongola, and Audoormoney Nos. 1 and 2, guilty of the charges brought against them, but we are of opinion (with the deputy magistrate) that they acted in what they did throughout in subjection to

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the power and will of others, and *therefore* they must be excused and acquitted. We are also of opinion that the charge against the prisoner Okhoychurn No. 10, is not proved. It is impossible to disprove what he is accused of having falsely sworn, and moreover it is probably true that "he heard of Kadumbinee's death at Dundeepore." We convict the remaining thirteen prisoners Nos. 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 16, of the wilful and corrupt perjuries with which they stand charged; and I sentence them each and severally to three years' imprisonment with hard labor but without irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The circumstances of this trial are peculiar, and the proceedings of the deputy magistrate have tended to complicate the case so much, that we find a difficulty in dealing with it as to the relevancy of the falsehoods charged to the matter legally in issue before the Court, when the alleged false statements were made.

It appears that a girl, named Kadumbinee, was prosecutrix in a case of highway robbery, in which the darogah sent in the accused party and the witnesses. The depositions of the witnesses, or of some of them, were apparently taken, and the case postponed for the presence of the prosecutrix, whose application to be represented by a mookhtear was refused by the magistrate. She was then reported to have died of cholera on her way to the court.

At this stage of the case, the deputy magistrate, in whose jurisdiction the alleged crime had been committed, took charge of the office where the case was pending, and instead of bringing up the case, and summoning and examining witnesses to the fact of the girl's death, as part of the trial and as accounting for the necessity of dispensing with her personal attendance and of making use of any deposition already deposed to by her, and thus connecting with and making relevant to the prosecution all the evidence on this point, he, for reasons of his own, suspected the truth of her reported death, and went to the spot to examine the witnesses who came forward to depose to it. Still no further steps were taken with the trial of the individual accused of the robbery, but after a time, on some further *secret* information, he issued orders to the darogah, who proceeded with a posse of police burkundazes to the house of the prosecutrix's husband, surrounded the premises to prevent the egress of any one, and on the husband coming outside seized him and insisted on his delivering up his wife; the girl then made over to the police, as his wife, is said to be the same identical girl who first personated her sister before the darogah, when the charge of highway robbery was originally made, whose death was afterwards reported, and who, though assuming herself to be another wife of her husband and not the one whose death he

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reported, is said to be the elder sister of the girl she personated, and the prosecutrix whose presence was required by the magistrate. It is also stated that the charge of highway robbery, originally made, is a false and trumped up story as no such offence was ever committed.

Now, with these facts before us, it seems manifest, that the deputy magistrate could take no cognizance of the reported death of the girl, (it being a natural death to which no criminating circumstances were attached,) except as connected with the trial of the highway robbery, and that no use could be made of the false statements to ground upon them charges of perjury, unless there be proof that they were relevant to the issue in that case. But it is beyond a doubt that the trial of that charge has never yet come on, the person accused has been enlarged on conditional bail, and the whole charge against him has been pronounced by the deputy magistrate in his proceedings in this case to be false and unfounded. In short, a more confused state of facts cannot well be imagined, on which charges of perjury could be found. Neither does the finding of the additional sessions judge on the facts of this trial show how he held the alleged falsehoods to be material to the issue of the case. All he has recorded on this point is that "under other circumstances the presence of the prosecutrix would not have been insisted on, and all that resulted from the order for her appearance would have been so far excusable that the law of perjury could not have been put in force."

From this it would appear that the sessions judge considered, as we do, that the statements of these persons, who deposed to the death and cremation of the prosecutrix can only subject them to a charge of perjury as connected with the trial of the highway robbery, at which the prosecutrix's presence was deemed necessary; but we cannot see that these proceedings were really so held; they were extra judicial proceedings, and not carried on with reference to the furtherance or the disposal of that case, that is to say, the conviction or acquittal of the accused party, for no single step was taken with that object, nor has that person even yet been brought to trial, and we therefore cannot treat their depositions as perjuries in reference to the issue in that case.

The Government advocate had filed a *vakalutnamah* in this case and was called upon by us to show cause why this conviction should not be set aside, and he distinctly admitted that he saw no legal grounds on which to support it; that he could not even plead that the identity of the prosecutrix with the person whose death was reported was indubitably established, there being only the oath of the witnesses for the prosecution against the oaths of those on the other side.

As the circumstances do not, in our opinion, justify the con-

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clusion that the statements, even if false, of the prisoners were relevant to any issue before the court, at the time they were given, we cannot uphold this conviction and therefore acquit all the prisoners.

Some of these prisoners we observe were cited as witnesses for other prisoners, when put on their defence on these charges and supported their statements. On the ground then that the evidence for the prosecution had established the converse of their depositions they were at once committed for perjury. By this proceeding, the deputy magistrate entirely pre-judged the case. It was for the court who tried them on those charges to determine whether the converse of their statements was proved, and not for the committing officer so to decide upon them. By this mode of procedure a prisoner would be invariably deprived of every witness who supported a defence at variance with the prosecution. The charges too against the prisoners Nos. 5, 6 and 7, are framed on a wrong impression of their respective statements of the 26th January, 1856, and 13th November, 1855. The parts of those depositions which contain the *written* questions and answers do not support the meaning conveyed by the charges set forth in the calendar, and it is only by including the *printed heading* of each deposition, that any inference can be drawn as to the witness having intended to misrepresent his knowledge of the prosecutrix's identity. When that evidence was given, no suspicion of the girl's identity was entertained, and it is most probable, the printed part of the deposition was filled up by the writer of it as a matter of course without any warning to the witness.

We think these are matters which should not have escaped the notice of the sessions judge at the trial, but he seems to have accepted the whole of these proceedings without scrutiny. He is expected in future to specify with more exactness, in cases of perjury, how the falsehood charged is held to be relevant to the matter in issue before the court, unless a decided and specific finding of this fact can be had, the charge cannot be held to be properly proved to justify a conviction.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND SHEIKH PUNAOOLLA,
versus
BUSHEEROODDEEN (No. 19,) SONAH MEER (No. 20,) SHEIKH TORAB (No. 21,) SHEIKH MEAJAN (No. 22,) SHEIKH HAROO (No. 23,) AND SHEIKH BADOLAH (No. 24)

Midnapore.

1856.

December 10.

Case of BUSHEEROODDEEN and others.

Appeal rejected.

CRIME CHARGED.—Assault with wounding, in having so severely assaulted and wounded, the prosecutor with blows of sticks and an instrument called "*genrass*" as caused him grievous bodily harm; 2ndly, with being accessaries to the above crime both before and after the fact.

CRIME ESTABLISHED.—Assault with severe wounding, endangering life.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 28th July, 1856.

Remarks by the officiating sessions judge.—The prisoners plead *not guilty.*

From the evidence of four eye-witnesses the charge against the prisoner is fully proved. It appears that prisoner No. 19, Busheerooddeen, incensed with the prosecutor, who had rejected his invitation to his son's "*anoprashun*" (the ceremony of first putting food into a young child's mouth) went to his house at 1 *pahur* or 5 *gurees* of the night and had an altercation with him on the subject, and while so doing was joined by the other five prisoners armed with clubs when all shouted out to beat the prosecutor. The prisoner No. 21, Sheikh Torab first struck the prosecutor who received the blow on his hands. Busheerooddeen prisoner No. 19, then struck him with a *lattee* (probably bound with iron) on the forehead and felled him to the ground when all the prisoners made off. They were arrested the next morning but the weapon with which the wound was inflicted has not been found. The civil surgeon deposes to the wound having been a serious one, and that the prosecutor's life was in danger from tetanus having supervened There is nothing whatever in exculpation of the prisoners proved by their witnesses. I therefore sentence Busheerooddeen prisoner No. 19, to five (5) years' imprisonment with labor, Sheikh Torab to three (3) years and to pay a fine of Rs. 25 in a week or to labor. The remaining prisoners Nos. 20, 22, 23 and 24 to be imprisoned each for one year and to pay a fine of Rs. 15 each, in a week or to labor.

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Case of BUSHEEROODDEEN and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton). There is nothing on the record to impugn the evidence of the eye-witnesses, who speak positively and directly to the assault. The appeal merely repeats the denial of guilt by the prisoners. We see no reason to interfere with the conviction and sentence passed by the sessions judge.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

24-Pergunnahs.

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December 10.

Case of DEENONATH BANERJEA.

Appeal of prisoner convicted of uttering a forged deed, &c. rejected.

GOVERNMENT

versus

DEENONATH BANERJEA.

CRIME CHARGED.—1st count, fraudulently uttering a forged and fabricated *sunud*, dated 11th Assar, 1263, B. S., purporting to be signed and sealed by Syud Abdool Ally, which he (prisoner) well knew to be forged and fabricated; 2nd count, perjury, in having on the 14th July, 1856, deposed on solemn declaration taken instead of an oath under Act V. of 1840, before the magistrate of 24-Pergunnahs, in the case of Government *versus* Abdool Ally charged with coining that "Mirza Kasim Yar has for some time been an acquaintance of mine. He took me to Abdool Ally on the 5th or 6th of Assar, and said, This person is highly trustworthy, employ him, on which Abdool Ally hearing me to be trustworthy agreed to employ me * * * * On the 11th Assar, the said Abdool Ally appointed me a mohurrir on 15 rupees, and gave me a *sunud* with his seal and signature * * * * Five days ago, on Thursday night at 10 or 11, Abdool Ally shewed me two dies (for coining), and said, These have become bad, it is necessary for you to go quickly to Harradhone Chatterjea of Bandora Gopaulpoor, and get them repaired. I was unwilling; not knowing the village. He (Abdool Ally) then called Nazir Sheikh Mussulman, who is his servant (but of whose place of residence I am ignorant) and told *him* to go. He agreed. Abdool Ally then placed a letter to Harradhone Chatterjea, and also the two dies in an envelope and gave them to Nazir." Such deposition being false and having been intentionally and deliberately given on a point material to the issue of the case.

CRIME ESTABLISHED.—Knowingly uttering a forged deed, &c.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 20th August, 1856.

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Case of DEENONATH BANERJEA.

Remarks by the additional sessions judge.—Certain descendants of Naib Nazim of Bengal Mozuffui Jung, reside in the 24-Pergunnahs, receiving large Government pensions, viz.: the Begum Dilras Banoo, the daughter, and Mohamud Reiza, Usgur Ally, and Ahmud Ally, the grandsons of the late Soulat Jung. Soulat Jung besides his share of the Nizamut hereditary pension, possessed a large private estate, which, for some good reason or other, he transferred in his life time by a deed of gift to his wife, Nigarana Begum. Nigarana died after her son, the father of Mahomed Reiza and his two brothers, and consequently her private property has descended to the Begum Dilras Banoo, who holds it also under a certificate from the civil court under Act XX. of 1841. There is a feud regarding the enjoyment of this property between the Begum and her nephews, and it seems probable the present prosecution has arisen from some endeavour of the nephews to injure Abdool Ally, the real prosecutor in this case, (witness No. 3, of the calendar), who is on very intimate terms with the Begum, and in fact lives with her. It is clear from the record that the prisoner, now under trial, is a person of loose character, who lives by his wits, and one of whose sources of profit is giving evidence in cases in the Calcutta Small Cause Court.

On 20th June last, the prisoner gave the magistrate gratuitous information that the above-mentioned Syed Abdool Ally was a coiner, but his information seems to have been distrusted. Nothing daunted, he appears on the 11th July last to have hired one Nazir, witness No. 10, to take a letter from Abdool Ally to one Harradhone Chatterjea, residing in the Burdwan district, containing in the envelope two dies for coining eight-anna pieces. and to have accompanied Nazir as far as Hooghly. On reaching Hooghly, he at once proceeded to the thannah, leaving Nazir at the place, he had told him to await his return in, and caused Nazir's arrest with the letter and dies. The prisoner has never attempted to explain why *he* went to Hooghly, but so far, his measures to a certein extent, seemed to succeed. The matter was then transferred to 24-Pergunnahs. On the 12th July, without a moment's delay, Abdool Ally's house was searched, but nothing whatever was found in it to shew he was a forger of counterfeit coin, as there would undoubtedly have been, had he been so. On the 13th, the prisoner was confronted by the darogah with Abdool Ally and others, and although he professed to have been for nearly a month preceding in Abdool Ally's service, he was at first unable to recognise the party accused by him, calling two other persons Abdool Ally, before he recognised the right person. On the 14th July, the magistrate took the prisoner's deposition as prosecutor and informer, when to strengthen his assertion that he had been and was in Abdool Ally's service and therefore cognizant of Abdool Ally's illegal acts, he pro-

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duced a *sunud* of appointment as a mohurrir on 15 rupees a month, dated 11th Assar or three days *after* he had made his first deposition to the magistrate on 20th June, as then in Abdool Ally's service. The seal on this *sunud* is a *painting* not an *impression*, and the signature has been proved not to be Abdool Ally's, both by Abdool Ally himself and by three witnesses (Nos. 4, 5 and 6,) who are acquainted with Abdool Ally's handwriting: would too, a coiner give a *sunud* to an agent employed to assist him in coining? The person who is said to have introduced the prisoner to Abdool Ally, witness No. 9, denies knowing the prisoner by sight. The intimate friend of a great lady like the Begum Dilras Banoo, who receives 900 Rs. per mensem Nizamut pension for herself alone, and who possesses private property at Chitpore and elsewhere said to be worth 12 lacs of rupees is not a likely person to take to coining 8-anna pieces The day Abdool Ally's house was searched, Mahomed Reiza left Calcutta for Moorshedabad, but his two brothers are still here.

The prisoner pleads *not guilty*. He has summoned nine witnesses to prove simply he was Abdool Ali's servant, of whom four could not be found. Of the five he declared one Golam Ally Khan was not the man he named *after he had given evidence, saying he had never seen the prisoner*. He then said the other four (Nos. 13, 14, 15 and 16,) were not the right persons, but that there were other persons of their names in Abdool Ally's service, whose testimony was of importance to him. I therefore postponed the case and had an order issued through the magistrate to the darogah, either to produce the four witnesses or to ascertain precisely that there were not such persons in Abdool Ally's service. The darogah, after a sufficient enquiry, declares that there are and were no such persons, and Abdool Ally, has himself made an affidavit on oath to the same effect. The charge of forgery was made against the prisoner by Abdool Ally on oath on the 17th July.

In concurrence with the law officer, I convict the prisoner of knowingly uttering a forged instrument and of wilful perjury in his deposition on the 14th July, and I sentence him to seven years' imprisonment with labor and without irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The circumstantial evidence makes out a strong case against the prisoner, which he has been unable to shake either by citing witnesses or in any other way. We see no reason to interfere with the conviction.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

DEENONATH BYAN (No. 1, NON-APPELLANT,) RAJNARAIN BYAN (No. 2,) GUNGARAM BYAN (No. 3,) AND HULLODHUR HALDAR (No. 4.)

24-Pergunnahs.

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Case of RAJNARAIN BYAN and others.

Conviction of conspiracy reversed in appeal.

CRIME CHARGED.—1st count, conspiracy in having consulted and agreed falsely to charge Bancharam, Gopal and Bhyrob with the crime of burglary and giving false evidence against them with intent to prevent the course of justice by procuring the punishment of innocent men; 2nd count, No. 1, perjury, in having on the 3rd July, 1856, deposed on solemn declaration taken instead of an oath under Act V. of 1840, before the magistrate of the 24-Pergunnahs, in the case of Deenonath Byan *versus* Bancharam Haldar and others, charged with burglary, that "last 16th Assar, on Saturday night in the middle of the second watch, I awoke and in the north wall saw a hole through which light appeared, therefore started up and became aware that a burglar had cut an entry. After that I came out and summoned my neighbours, Gungaram Byan, Rajnarain Byan, Purrikhit Pyke and Baluck Sirdar Chowkeedar, and shewed them the burglarious entry. On searching the house, I ascertained that three pewter *thals*, a brass *ghuttee*, a *battee*, a tumbler, three cloth *dhotees*, two *chuddurs*, a *pulwary*, a gold *kubuz*, a gold *passa*, five documents and a musquito curtain, altogether amounting to about 14 or 15 Rs. worth of property had been stolen and removed. * * * * * The clothes and dishes produced are my own property." Such deposition being false and having been intentionally and deliberately given on a point material to the issue of the case; 3rd count, No. 2, perjury, in having on the 3rd July, 1856, deposed on solemn declaration taken instead of an oath under Act V. of 1840, before the magistrate of 24-Pergunnahs, in the case of Deenonath Byan *versus* Bancharam Haldar and others, charged with burglary, that "on the 16th Assar, on Saturday night, I heard a noise in plaintiff (Deenonath's) house, went there and saw that towards the north side of plaintiff's house a burglarious entry had been made, on asking plaintiff he told me that a thief had committed burglary and taken away property * * * * * The property (found in Bancharam's house) is all the plaintiff's. I know it to be his because I often before saw him using it * * * * I know the tumbler (found in Gopal's house) belongs to plaintiff's." Such deposition being false and having been intentionally and deliberately given on a point material to the issue of the case; 4th count, No. 3, perjury, in having on

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the 3rd July, 1856, deposed on solemn declaration taken instead of an oath before the magistrate of 24-Pergunnahs, in the case of Deenonath Byan *versus* Bancharam Haldar and others, charged with burglary that "on 16th Assar, about the middle of the second watch, hearing a noise in plaintiff (Deenonath's) house, I went there and saw a burglarious entry in the north wall of the north house, and Deenonath said, that burglars had made an entry and stolen away *thals*, *ghuttees* and other property * * * * The property numbered 1 to 4 and 7, I know, belongs to Deenonath (plaintiff)." Such deposition being false and having been intentionally and deliberately given on a point material to the issue of the case; 5th count, No. 4, perjury, in having on the 3rd July, 1856, deposed on solemn declaration taken instead of an oath under Act V. of 1840, before the magistrate of 24-Pergunnahs in the case of Deenonath Byan *versus* Bancharam Haldar and others, charged with burglary that "on 16th Assar, Saturday night, I was asleep in my house and was called up at about midnight by Baluck Chowkeedar, who told me of a burglary in Deeno Byan (plaintiff's) house, so went with him to Deeno's house at night and saw a burglarious entry (fit for a man to enter) in north wall of Deeno's north house * * * * * * I see the property produced (from Bancharam's house) and know it to belong to plaintiff, because I occasionally was employed by him and used all these dishes at meals, in this way I know them." Such deposition being false and having been intentionally and deliberately given on a point material to the issue of the case.

CRIME ESTABLISHED.—Conspiracy.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 19th August, 1856.

Remarks by the additional sessions judge.—The parties in this case, who reside in the same village, have been long on bad terms, owing chiefly to intrigues with the females of the respective families. The witnesses Nos. 3, 4 and 5, who are in reality the prosecutors, belong to one party, and the prisoners and one Durponarain to the other. At last, the prisoners charged the prosecutors with burglary, had their houses searched for the plundered property, and affirmed some household articles found in them were theirs (the prisoners). The prisoner, Deenonath, had previously, on 26th April, 1856, filed a criminal charge against the prosecutor, Bancharam, which came to nothing, and there was then another charge preferred by one Dabessurree against Komul Haldar, and others of branding, this Komul being brother to the prisoner Hullodhur, and Dabessurree on bad terms with the prisoner's friend Durponarain.

The darogah evidently, from his report, considered the charge

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of burglary brought by the prisoners a false one, and still *chulaned* the case to the magistrate, which, I think, he should not have done. Having done so, the magistrate was justified in examining on oath the prosecutor, Deenonath (prisoner No. 1,) and his witnesses (the prisoners Nos. 2, 3 and 4,) and in admitting a subsequent charge of conspiracy and perjury on the first charge proving to be a false and malicious one.

The first prisoner at once confessed to the magistrate freely and voluntarily (witnesses Nos. 1 and 2,) the charge was a false one preferred by him and supported by the evidence of his friends, the other prisoners, at the instigation of Durponarain; but the other prisoners have denied the charge throughout. The evidence, however, independent of Deenonath's confession and the probabilities of the case is ample, the witnesses Nos. 6, 7 and 8, proving the ill-will on caste matters existing between the parties, and the witnesses Nos. 6, 7, 8, 9 and 10, swearing to the articles found in the prosecutors' houses, when they were searched, to be prosecutors' and not prisoners'. The prisoners have not attempted to rebut this evidence, they have cited nine witnesses to character only, and of these nine, they have declined to examine eight.

In concurrence with the law officer, I convict the four prisoners of conspiracy to charge certain persons falsely with a heinous offence, and I sentence them as follows: The prisoner Deenonath Byan, will be imprisoned three years with labor commutable to a fine of 50 Rs. payable in ten days. The other three prisoners will be imprisoned each one year with labor commutable to a fine of 10 rupees, payable in ten days. We have some doubt about the perjury, as the committal was made on a charge which the police had themselves considered false and malicious, and subsequent, though in the same proceeding, to the decision in the burglary case, in favor of the accused; but for the conspiracy the statement on oath of the prosecutor, and the evidence without oath of the witnesses at the thannah alone would be sufficient.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The sessions judge has convicted the prisoners of conspiracy, and it would appear from the evidence on record that the charge is held to have been proved by the evidence of certain persons in whose houses property, alleged to have been stolen, was found, which property, they and their witnesses swore, belonged to themselves. This evidence is not sufficient to establish a charge of this nature. There is nothing more than the oaths of one set of witnesses against the contrary oath of the prisoners, without proof of any material fact from which any absolute presumption may be drawn to show on which side the truth indubitably preponderates. We must therefore acquit the prisoners.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

GOPALCHUNDER GHOSE.

24-Pergunnahs.

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December 10.

Case of GOPALCHUNDER GHOSE.

In a case of robbery with open violence the Court would not interfere with the conviction and orders of lower court.

CRIME CHARGED.—Robbery of ornaments valued at Rupees 10-6, from the person of a child, named Rajcoomaree, and attempt to murder the said child.

CRIME ESTABLISHED.—Robbery with open violence.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 14th August, 1856.

Remarks by the additional sessions judge.—The prisoner, who is a person of idle habits and of evil repute, lives near Dinonath, witness No. 10, whose child, Rajcoomaree by name, and but two and half years old, he has been in the habit of occasionally playing with. On the 3rd July last, he was seen taking the child away from the door of its home, apparently with the intention of shewing it something on the road. It was neither brought back nor did it return of itself and its parents became alarmed and went to look for it with some friends. The prisoner was first asked what had become of it, when he merely said he had taken it up to shew it something on the road and then taken it back again and left it. After some further search, it was found with the witness, Adooree, No. 11, who had just found the child amongst some trees and bushes, much hurt in its person and deprived of all the valuable silver ornaments it had previously had on. She had heard it crying and moaning as she went along a path near the orchard, where the child was as it were hidden. The poor infant was suffering much from a squeeze on the throat and rough treatment on other parts of its body, and did not recover for days. The father and his friends then went again to prisoner and got him to confess he had stripped the child of its ornaments, which he deposited, he told them, with one Thakoor Kansaree, witness No. 9. This person on being asked for them by the prisoner in presence of the child's father and others (witnesses Nos. 6, 7 and 8,) at once gave them up, and they have been fully recognised as those worn by the child, Rajcoomaree, when carried.

Prisoner's first story was that he had taken the child into the town in his arms, and had then on account of the crowd and for fear of its being robbed, taken off its silver ornaments;

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that subsequently he put the child down on the ground holding its hand, when from the pressure of the crowd it got separated from him and lost; and then that going to the child's home to give the ornaments up to its mother and other relatives, he left the house without doing so, as none of them were at home. Before me, he repeats the same most improbable story with a considerable variation. He says he went and offered the ornaments to the child's female relatives, but that they would not take them as the child had not been found; and that on this he deposited them with Thakoor Kansaree. Thakoor Kansaree, on the other hand gives a third version and was, I suspect, in the first instance, an accomplice.

In concurrence with the law officer, I acquit the prisoner of the intent to murder the child, as had he meant to kill it, he would have done so, easily; but convict him of the robbery with open violence from its person, and I sentence him to ten years' imprisonment with hard labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Two vakeels have appeared on the part of the prisoner, and merely pleaded for some mitigation of the sentence passed upon the prisoner, but we see nothing in the case which requires the interference of the Court on this ground; and we therefore confirm the sentence passed by the sessions judge.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND CHUNDER MISSREE

versus

BHOLOO DOSS.

Midnapore.

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Case of BHOLOO DOSS.

Under the circumstances of the case, and of the alleged admissions of prisoner, the Court concurred with sessions judge against the futwa of his law officer in acquitting him.

CRIME CHARGED.—Wilful murder in having so violently pressed the throat of the prosecutor's daughter named Narain Monee, about ten years old, for the sake of her ornaments, that she then and there died from the effects thereof.

Committing Officer.—Wuheedoon Nubee, deputy magistrate, exercising powers of a magistrate of Nugwan.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 18th October, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads "*not guilty*," and in his defence urges that his confession was extorted from him; and that when accused of the crime he denied it; that on the first search made in his house on the Sunday, no property, belonging to the deceased, was found in it; and that Golab Singh Burkundaz, contrived to introduce it surreptitiously into his house on the following day.

The *futwa* of the law officer convicts the prisoner and declares him liable to *seeasut.* Dissenting from this conviction, I submit the case for the orders of the superior Court.

The circumstances of the case are as follows. On the 4th Sraban, 1263, corresponding with the 17th July, 1856, one Narain Monee, the daughter of the prosecutor, about ten years of age, is stated to have gone from her house at six *gurries* of the day to visit the house of Chunder Misser, a relation living close by in the village of Manickpore, as well as to see a friend, Bishtoo, a child, of about the same age, a cousin of the prisoner and residing in the same homestead with him.

The father of Narain Monee had gone out for the day and did not return till evening, when he enquired for his daughter. His wife told him what has been related above. The prosecutor then despatched a boy, Horee Jana, to Chundee's house, and shortly after, following him, met Chundee, who stated that he had also been absent from home that day, but had learnt from his wife that the missing child had been to his house, but left it at about seven *gurries* of the day. The evidence of the child's mother, of her friend, Bishtoo, and of Chundee's wife, has not been adduced at the trial. This should have been done, for the statement of the father and Chundee is mere hearsay. These two men then went to Bholoo, the prisoner's house. On their enquiry Bholoo and his father allowed Narain Monee had been

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there, Bishtoo also said the same as did Soondur Doss's wife, and Monee, Bholoo's step-mother. But with the exception of the latter, none of these persons were examined either by the police or by the deputy magistrate. Monee was examined only by the police.

The prosecutor then despatched the said Chundee Misser, witness No. 2, to the house of Nurhuree Misser, witness No. 13, the father-in-law of Narain Monee.

On his way he met one Ruggoo Doss and Pursoo Doss, witnesses Nos. 15 and 16, who mentioned that on that day, they had seen Bholoo Doss follow the girl, when she left Chundee Misser's house. The evidence of these men does not agree with that of Chundee Misser. They state that Chundee went straight on to the father-in-law's house. Whereas he states he returned with the information to the prosecutor's and afterwards proceeded to Hurhuree Misser's. It is remarkable that the depositions of Ruggoo and Pursoo were not taken until the 21st July, when the confession of the prisoner is said to have been made and the property found.

Information having been sent to the thannah, that the child was missing, the darogah, instead of going himself, deputed Goolab Singh Burkundaz, and sent orders to the jemadar stationed at the outpost of Heera Konya to make search.

The burkundaz first arrived at the village of Shaam Hureebar early on Saturday morning, the 6th Srawun, corresponding with the 19th July, and took the prisoner in charge on the suspicion of the prosecutor.

After much search, the body of the girl was found and sent to the civil surgeon at Contai, who was unable, owing to its advanced stage of decomposition, to state the probable cause of death, more than that, in his opinion, it was a violent one.

On the Monday following, the 21st July, the prisoner, it would appear, was taken from his place of custody to his own house to get his meal about noon, a proceeding which was unusual and had not before been permitted.

The jemadar and burkundaz, who, on the occasion, accompanied him, state that in the hearing of the former, who was seated just outside of the house, and in the presence of the latter, the prisoner's father and grandfather, said to him "Why are you putting us all to this trouble, if you have done this, give up the ornaments, fall at the darogah's feet, and the matter will be settled." The prisoner replied, "If no harm is to happen to me, I will produce the *mal.*" Information of this having been sent to the darogah, he came and told the prisoner, no harm should happen to him. The above promise and inducement given not only in the presence but by the police throws such doubt on the voluntariness of the confession, that it cannot, in my opinion, be

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admitted as evidence against the prisoner. The whole of this transaction is very suspicious. The prisoner's house had been carefully searched on the previous Sunday, but no property found. He had then denied the charge, but his answer was not recorded. Moreover the prisoner had already been in the custody of the police for two and a half days or from early on Saturday morning, (the time of apprehension is misstated in *chelaun* No. 2,) a detention expressly prohibited by law, any relaxation of which is strictly forbidden in a late Circular No. 22, of 12th November, 1855.

The search for the property after this was most irregular, and opposed to law. It was not conducted in the presence of three or more respectable persons independent of the police.

Haroo Jana Burooah, witness No. 11, Bogwan Seet Chowkeedar, witness No. 12, the jemadar and Goolab Singh Burkundaz, aforesaid, are the only witnesses. The evidence on this point is very contradictory. Witnesses Nos. 11 and 12, state that they and the police went into the house, and saw the prisoner, after removing the mud plastering with a reaping hook, get on tip-toe and produce from a hole in the wall a bag containing the ornaments; that the police permitted themselves to be searched before entering the house. The jemadar's evidence is to the effect that only the prisoner and Goolab Singh went into the house; that he himself stood at the door, when suddenly the prisoner put the bag into Golab's hands, but from what place it was produced by him he could not see; that on examination he found the hole in the wall was high up, and that the prisoner must have got on a *machan*, which was near, to have reached it; and that the burkundaz's person was not searched on the occasion.

The mofussil confession then, in my opinion, if ever made, was consequent on the promise and inducement held out as above stated to the prisoner; that the property was fairly found in his house is open to the gravest suspicion. Under such circumstances, it would be dangerous to rely on the confession made before the deputy magistrate. It does not appear that he gave any warning calculated to remove the effect which the promise and inducement given by the police must have produced on the prisoner's mind. Were this confession, however, even received as evidence, it does not amount to an admission of the crime laid to his charge, I would therefore acquit the prisoner.

Remarks by the Nizamut Adawlut.—(Present : Messrs. H. T. Raikes and J. H. Patton.) We concur with the sessions judge in thinking that the evidence in this case will not warrant a conviction. It was only in the presence of the police that the prisoner confessed to having killed the girl, he at that time having been upwards of two days in custody. His subsequent

statement to the deputy magistrate does not amount to an admission of guilt beyond having appropriated the ornaments after finding the body floating in the *pool* of water behind his house. There is, moreover, no certainty that the girl died from violence, so as to connect her death with the possession by the prisoner of the ornaments she had worn. In concurrence with the sessions judge, we acquit the prisoner.

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December 10.
Case of BHOLOO DOSS.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

POORUN SINGH.

Bhagulpore.
1856.
December 11.
Case of POORUN SINGH.

The alleged false statement not being material to any issue before the court, prisoner acquitted of perjury.

CRIME CHARGED.—1st count, perjury, in having on 13th May, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the darogah of Durriapore thannah, who was competent to administer an oath "that I saw Khosroo Singh set fire to the stack," and in having on 30th May again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the joint-magistrate of Barh, "that I do not know who fired the stack and do not know (Paichanoo) Khosroo Singh." Such statements being contradictory of each other on a point material to the issue of the case; 2nd count, in having on the 30th May, deposed, under a solemn declaration taken instead of an oath before the joint-magistrate that the darogah "kept me shut up in thannah from the day of my *izahar* (May 13th) till this day (May 30th) being a period of eighteen days, and that darogah compelled me to write what I did at thannah." Such statement being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. A. V. Palmer, joint-magistrate of Barh.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 5th August, 1856.

Remarks by the officiating sessions judge.—This case was tried with the aid of a jury* at Monghyr on the 1st, 2nd and 5th August, 1856.

* Sheikh Bokun.
Beja Singh.
Rughoonath.

The prisoner pleaded *not guilty.* The prisoner, who was at first named as prosecutor in case No. 1, of statement No. 8, for August, 1856, was indicted

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on two counts. 1st, for making on oath contradictory statements before the police, on the 13th May, 1856, and the joint-magistrate of Barh, on the 30th idem, on a point material to the issue of the case; 2nd, in declaring that the police kept him shut up for eighteen days, knowing the same to be false.

Witness, No. 3, the officiating darogah by whom the oath was administered, deposes, that on 13th May, prisoner voluntarily made the deposition in the case of Government *versus* Khosroo, charged with incendiarism, the mohurrir, Soonderlal, witness, No. 6, wrote it, and witnesses, Nos. 1 and 2, attested it, and it was afterwards read to him, he implicated Khosroo and four others, as having set fire to a stack, belonging to the Railway contractors, but he could not state whether he actually made use of the words in the indictment, "I saw Khosroo set fire to the stack." After this he accompanied the darogah to Mokawan to investigate the case, and on the 19th, the prisoners were apprehended, and so far from his being confined at the thannah by the police for eighteen days, he used to go almost daily to his employer, Mr. Gibbs, for pice to buy food, this statement is corroborated by Mr. Gibbs, who, with Mr. Crook, went on two occasions to the thannah to see how the cases were progressing, so that if the prisoner had been confined, as represented, they must have seen him. Mr. Gibbs in his deposition declared that the darogah informed him that Benee Singh (the prosecutor in case No. 4, of statement No. 8, for July, 1856) had offered him a bribe to release the prisoner, Khosroo, and implicate one Goburden Hullye; the darogah confirms this declaration, indeed Benee Singh used his utmost efforts to get the prisoner acquitted before the joint-magistrate at Barh. I allude to this matter, as it coincides with what has been recorded about Benee Singh's designing propensities.

Goordial Singh, witness No. 4, took the prisoner's deposition on the 30th May, before the joint-magistrate in the office, the oath was administered by Cheydee Panrey, witness No. 5, when he declared, he knew nothing in the case, the darogah had shut him up for two days, and ordered him to give his deposition for the "Sahib," he did not know who set fire to the stack nor did he give him authority to lodge the complaint. When the darogah brought him to Durriapore, he told him, if he did not write his statement of the case, he would call for four men, and make him record something; through fear, and after being confined two days, he gave his deposition. The mohurrir put this question. Why did you complain at the thannah? Answer, "He was not prosecutor, and did not complain," the latter portion of prisoner's deposition was written by another mohurrir, who was not named in the calendar, but this witness distinctly heard him state before the joint-magistrate that the darogah had imprisoned him for eighteen days.

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Case of POORUN SINGH.

After a careful perusal of the depositions on oath before the police taken on the 13th May, I find the words, "I saw Khosroo set fire to the stack," nowhere recorded, the joint-magistrate must have mistaken Lalla's representation, who is said to have cried out to Poorun, "I saw Khosroo set fire to the stack." This portion of the indictment fell to the ground, but from the evidence of the officiating darogah, and Mr. Gibbs, indeed, also the witnesses for the defence, it is manifest, that his statement on oath of the police confining him for eighteen days is false and amounts to perjury.

The prisoner in his defence, pleads that the darogah confined him for two days and he remained with him for sixteen days, and he was not allowed to go any where, he did not sign the deposition at tne thannah, and cannot tell who did so for him, his witnesses will prove these facts.

Witness No. 7, took 1 Rupee 8 annas to him when at the thannah by order of Mr. Gibbs, he was seated in the verandah, previously to witness's taking the money, the prisoner used to come regularly to Mr. Gibbs for pice, and he knew nothing of his being shut up even two days.

Witnesses Nos. 8 and 9 state, they took some treasure to the thannah, they saw the prisoner, but he was not in confinement.

The jury return a verdict of guilty against the prisoner, in which I concurred, and sentenced accordingly, considering that the false statement on oath was maliciously made to criminate the police.

Sentence passed by the lower court.—Three years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton). The prisoner was indicted on two charges, first charge being supported by contradictory statements alleged to have been made by him before the darogah and joint-magistrate. On this count the sessions judge has acquitted the prisoner, finding the statements not contradictory of each other. On the second charge the prisoner is accused of falsely stating, before the joint-magistrate, that the darogah had kept him in confinement for eighteen days at the thannah, and the sessions judge has convicted him of the perjury charged, "considering that the false deposition was maliciously made to criminate the police." As this is no finding on the materiality of the false statement to any part of the case, it is not sufficient to warrant a conviction of perjury, neither do we see how the detention of the prisoner, at the thannah, can be said to affect the merits of the charge he made there.

The prisoner is acquitted accordingly.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MUNGUR RAM

versus

GUNGAPURSHAD (No. 9,) AND MOORUTH SINGH (No. 10.)

Patna.

1856.

December 11.

Case of GUNGAPURSHAD and another.

Under the circumstances of the case, the evidence being unsatisfactory, conviction of forgery, &c. reversed in appeal.

CRIME CHARGED.—1st count, Nos. 9 and 10, forgery of the following documents marked A. B. C. and D., viz., A. the *mooktarnamah* alleged to have been executed by the prosecutor, on the 7th December, 1854, in favor of Mewahlall, empowering him to register the deed of lease *(kutkina)* marked C. B. the *mooktarnamah* alleged to have been executed by the prosecutor, on the 7th December, 1854, in favor of Mewahlall, empowering him to register the bond of mortgage *(tumsook bhurna)* marked D. C. the *kutkina* purporting to be the deed of lease of mouzah Kyla Mukdoompore, inclusive of zumeen malikana and kharij juma of the said mouzah, and of 8 As., 14 D., 10 C. and 18 B. of mouzah Secunderpore, alleged to have been executed by the prosecutor, on the 6th December, 1854, in favor of defendant No. 9, for nine years from 1262, F. S., at an annual rental of Rs. 1,995. D. the deed purporting to be the bill of mortgage of the above mouzahs for Rs. 6,000, to be redeemed by rent of the lease (D. and C.) at Rs. 1,050 per annum, alleged to have been executed by the prosecutor, on the 6th December, 1854, in favor of defendant No. 9; 2nd count, uttering the above forged deeds marked C. and D. No. 10, uttering the above forged *mooktarnamahs* marked A. and B.

CRIME ESTABLISHED.—No. 9, forgery and uttering forged deeds as in crime charged. No. 10, accessary to the uttering of the aforesaid forged deeds.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 8th July, 1856.

Remarks by the sessions judge.—The prisoners plead *not guilty.*

It appears from the statement of the Government wukeel and from the deposition of Mungur Ram, prosecutor, that the latter had taken a lease of certain mouzahs; but was opposed in obtaining possession by the prisoner, Gungapurshad. In an Act IV. case, resulting from this disturbance, Gungapurshad produced the documents C. D. as executed by Mungur Ram in his favor and A. B. as powers of attorney authorising the same, the documents purport to be a deed under-letting part of the land

Case of GUNGAPURSHAD and another.

leased from Moulvee Gowhur Ally, witness No. 4, by Mungur to Gungapurshad for 1,995 Rs. and another pledging the same for an advance of 6,000 Rs. to be liquidated, by an annual charge of 1,050 Rs. on the above rent. These documents being suspicious, were retained by the magistrate and an enquiry instituted into the facts of the case, which led to the present prosecution. With regard to the prisoner, Gungapurshad No. 9, it is clearly proved in evidence that one Lokhnath, an agent of Mussts. Hoolasoo and Ghuseetoo, relatives of prosecutor and long at enmity with him, endeavoured to secure the false attestation of witnesses, Nos. 5 and 6, to documents which there is every reason to believe identical with those produced in court. It is further proved that both prisoners were present when Lokhnath made this attempt. The documents are in favor of the prisoner No. 9, and for his sole benefit, he being the *poojeree* or confidential priest of Hoolasoo and Ghuseetoo above mentioned. It is also proved that these same documents, when about to be registered, as if from Mungur Ram in favor of Gungapurshad, were protested against by Mungur Ram before the register of deeds. It is proved by witness No. 7, that the writing on the deeds purporting to be that of Barhoo brother of Mungur is not his writing, and by witnesses Nos. 1 and 2, that Barhoo died before the date of the deeds and writing in question. With regard to the prisoner Mooruth Singh No. 10, it is proved by witness No. 8, that he attended the registry office to procure registry of the deeds by attesting the signature of Mungur Ram, prosecutor, to the powers of attorney by which Mewahlall Mooktar, not yet apprehended, appeared empowered to draw them up and execute them.

The defence is that the deeds and powers of attorney are genuine, and denied by prosecutor from interested motives; the fact of producing and attesting them is freely admitted by both parties. The witnesses for the defence endeavour to prove the execution of the deeds by the prosecutor and the payment to him of the 6,000 Rs. they stipulate for. The prisoner, Gungapurshad, further refers to the depositions of several witnesses in the civil court, copies of which are in the record. These witnesses are those, whose names are in the several documents as attesting the same, their evidence has been read in court but conveys no feeling of confidence in the documents in question; had they been of real import to the defence they would have been called before the court. Witnesses Nos. 3, 4 and 5, examined for the defence, speak to facts which, if true, would have been easily corroborated by bankers' books or other incontrovertible evidence. They further state that Barhoo Ram signed for prosecutor when it is clearly established that he died prior to the date of execution of the documents, and that the writing on the deeds before the court is not his, this last circumstance being

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capable of test by several undoubted signatures of Barhoo Ram, in other cases, also before the court.

The law officer gives in a *futwa* of guilty against Gungapurshad of forgery and uttering the forged documents, against Mooruth Singh, of uttering or being accessary to the same.

I concur in this *futwa*. Of the guilt of Gungapurshad there can be no doubt. The other prisoner I convict of being an accessary after the fact inasmuch as it does not appear that he had any immediate interest in the perpetration of the forgery, or that any direct benefit to himself would be derivable from it or that he had any thing to do with the transaction prior to his appearance before the register of deeds to attest Mungur Ram's appointment of Mewahlall as his agent, he was evidently a tool of the principal Gungapurshad or of the more designing ladies Hoolasoo and Ghuseetoo. I convict Gungapurshad, prisoner No. 9, of forgery and uttering forged deeds as charged against him in the calendar and sentence him to five years' imprisonment with labor in irons.

I convict Mooruth Singh, prisoner No. 10, of being accessary to the uttering of the forged deeds, as charged against him in the calendar, and sentence him to one years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The evidence in this case appears to us insufficient to justify a conviction. The points relied upon by the sessions judge are, that one Barhoo Ram, whose signature is affixed to the forged deeds, died on the 4th December, two days before the date of execution; that the witnesses, Sheonath and Sheochurn Koormee, were asked by one Lokhnath to attest the deeds; and that the signature of Barhoo Ram does not agree with that known to have been affixed by him on other deeds. The evidence to Barhoo Ram's death, however, on the day mentioned is, in our opinion, far too indefinite to be regarded as fixing the date or the exact time mentioned and the evidence of the witnesses, Sheonath and Sheochurn is open to suspicion, as brought forward at a late stage of the enquiry.

In fact the statement, both of Barhoo Ram's previous death, and that made by the witnesses just alluded to, were never made in the Act IV. case, although the prosecutor professed to be previously aware of the existence of these forged documents and challenged them as such when produced in evidence against him. As to dissimilarity in the signature of Barhoo Ram on these documents and elsewhere, nothing of the sort is observable by comparison of the signatures on the record. The proof being thus in our opinion quite insufficient to convict the prisoners, we acquit them and direct their release.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT

versus

RAMCOOMAREE BEWAH (No. 1,) AND ANNUND BEWAH (No. 2.)

Moorshedabad.

1856.

December 11.

Case of RAMCOOMAREE BEWAH and another.

Two women convicted, on presumption, of wilful murder, though corpse was not found, and imprisoned for life.

CRIME CHARGED.—Wilful murder of the infant daughter of prisoner Annund Bewah.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 1st November, 1856.

Remarks by the officiating sessions judge.—On the 29th August, information was taken to the darogah of thannah Mirzapore in this district that the previous day the prisoner No. 2, Annund Bewah, of the village of Kullilpore, was questioned regarding her infant child (who, a child of five months old, it appears, was not to be found) and acknowledged that she had that day given it to the prisoner No. 1, Ramcoomaree who had thrown it into a *nullah* and it had thus died.

On the police proceeding to the village, the prisoners both confessed to the darogah; No 1 said that as she and No. 2, and the witnesses Nos. 1 and 2, Modhomonee and Woola Awruth were on their road to the Panchgram *hât*, they came to a *nullah* called the Targram Khooa, and that the prisoner No. 2, complained of her inability to procure food for this infant girl; that she was carrying and that Annund begged her to take it and throw it into the water; that she first refused to do so, but on the prisoner No. 2, again saying it was an illegitimate child, she took it from its mother's arms and threw it into the water and the child was drowned; this prisoner then told the above two witnesses to say nothing about it, and they all four proceeded on to the *hât*.

The prisoner No. 2, Annund Bewah, confessed to the same effect.

The prisoners were both sent in to the assistant magistrate at Aurungabad and arrived at his office at Jungeepore, late in the evening of the 31st idem, and as he (Mr. Herschel.) was unable to procure witnesses to attest a confession at that hour, he had them placed under a guard in his own house; during the night the prisoner No. 2, escaped, and the next morning No. 1, again confessed before the assistant magistrate, and acknowledged she had thrown the child into the water.

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December 11.

Case of RAMCOOMAREE BEWAH and another.

There is nothing in the record to shew how the prisoner No. 2, was reapprehended, but she also confessed on the 2nd idem, before the assistant magistrate, and acknowledged that she had told the prisoner No. 1, to throw the child into the water, and that prisoner did so, and the child was drowned.

Search was made by the villagers on the morning of the 29th and by the police afterwards, but the body was not found, and it is supposed to have been carried away by the force of the stream; the water was about the depth of four feet.

The two witnesses* Nos. 1 and 2, declare they saw the child thrown into the water by prisoner No. 1, Ramcoomaree, and that it was drowned and that although they all went in to the *hât*, and remained there some hours, yet having been told by the prisoners to say nothing about it, they told no one there or on their return to their own village.

* No. 1, Modhoomonee Awruth.
" 2, Wooloo Awruth.

Before this court the prisoners both pleaded *not guilty;* No. 1 said she had been ill-treated by the police, and therefore made her statements before them and the assistant magistrate, and No. 2, said she fell in the water, while crossing the *nullah*, and the child dropped out of her arms and was drowned.

The two confessions of the prisoners are fully proved and are borne out by the evidence of the witnesses† Nos. 1 and 2. The prisoners gave no intimation of the loss of the child to the villagers on their return from the *hat*, and had the prisoner Annund's statement in this court been true, she would undoubtedly have immediately returned to the village to procure assistance and endeavour to recover her child, the case is therefore fully proved, and as the prisoner No. 2, was standing by and gave the child to No. 1, for the purpose of being thrown into the river and drowned, and was fully consenting to the deed, I consider them both equally guilty of the wilful murder of the child.

† No. 1, Modhoomonee Awruth.
" 2, Wooloo Awruth.

The law officer in his *futwa* declares that wilful murder has not been legally proved as there are only female eye-witnesses to the fact, but that prisoner No. 1, is guilty of having thrown the child into the water and that it thereby died, and the prisoner No. 2, of having ordered the child to be thrown into the water, and that they are liable to discretionary punishment or "*acoobut.*" I am of opinion, as stated above, that the prisoners are guilty of wilful murder.

The body of the infant has not been discovered, but the prisoners admitted in their confessions the death of the child by drowning, and therefore the fact of its not having been found cannot be admitted as a bar to a capital sentence according to the precedent in the case of Sreemutty Adooree *versus* Bunma-

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Case of RAMCOOMAREE BEWAH and another.

lee Hajra and others, reported at page 12, of the Nizamut Adawlut Reports, Volume 3, part 1, of 1853, and seeing no extenuating circumstances in favor of the prisoners, and considering their act a cold-blooded murder of great atrocity, I feel it my duty to recommend that they both suffer death by hanging.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Although the body of the child has not been found, there is every reason to presume that the infant met its death in the water, and the women must therefore, on their own confessions and the evidence of the eye-witnesses, be deemed guilty of wilful murder. We sentence these two women, the prisoners, to imprisonment for life; transportation being unsuited to their sex, the imprisonment will be undergone in this country.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT

versus

KENARAM BAGDEE.

Hooghly.

1856.

December 12.

Case of KENARAM BAGDEE.

The prisoner was convicted as a dacoit and sentenced to imprisonment for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Babu Chunder Seker Roy, deputy magistrate, under the commissioner for the suppression of dacoity.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 11th November, 1856.

Remarks by the additional sessions judge.—The prisoner Kenaram Bagdee had been compromised by several of the approvers on the dacoity commissioner's establishment and was arrested on the 19th August, 1856. That same day he confessed to the commissioner to eighteen dacoities as per margin.* That his confession was as free and voluntary, as it certainly was uncollusive, is proved by the testimony of the two attesting witnesses.

Three of these eighteen dacoities were reported and enquired into at the time; Nos. 3, 5 and 18, and are thus known to have occurred. Witness No. 1, confessed to the Sadhant and Dautchar dacoities (Nos. 1 and 2) on 11th May, 1855, and in the first

* No. 1, Sadhant.
„ 2, Dautchar.
„ 3, Shimla.
„ 4, Momaree.
„ 5, Bijoree.
„ 6, Allipore.
„ 7, Balimdhur.
„ 8, Sreepore.
„ 9, Sheebpore.
„ 10, Amulmoree.
„ 11, Amulmoree, 2nd dacoity.
„ 12, Debeepore.
„ 13, Bhorpore.

1856.

December 12.

Case of KENARAM BAGDEE.

No. 14, Mobarukpore.
„ 15, Gokooldanga.
„ 16, Muglumpore.
„ 17, Balimdhur, 2nd dacoity.
„ 18, Barrila.

gave in the name of the prisoner as an accomplice. To-day he swears he was with him in both. Witness No. 2, declares he was in four dacoities with the prisoner, and one of the four is the Shimla affair admitted by the prisoner, and which was as above mentioned at once reported to the authorities. On referring, however, to this witness's original confession to the Shimla dacoity recorded on 15th December, 1855, I find that he now names the prisoner as associated in that offence for the first time. Witness No. 3, is the proprietor of the house at Bijoree which was attacked by dacoits in 1853, and the event reported at the time. This dacoity is No. 5 in the list of the eighteen admitted by the prisoner in the lower court.

Taking into consideration that the prisoner made a free and full confession immediately on his arrest; that three of the eighteen dacoities, he confessed to, are known to have occurred; and that there has been produced the direct testimony of one approver witness to one of the eighteen dacoities, corroborated by a statement he made long before the prisoner's arrest, in which he denounced the prisoner as an accomplice, I would convict the prisoner of being a dacoit by profession, and sentence him to transportation for life. The 1st approver witness says the prisoner when *he* knew him had a gang of his own. The 2nd approver knew the prisoner as a member of the gang commanded by Nobin Sirdar.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton). The prisoner denied at the sessions court; but we see no reason to doubt the truth of his confession before the committing officer. There is evidence also to the occurrence of some of the dacoities to which he confessed, and to his participation in them. We convict him of having belonged to a gang of dacoits, and sentence him to transportation for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT

versus

KOONDOO BEWAH (No. 2,) SOOMEETRA BEWAH (No. 3,) AND BOODHO BEWAH (No. 4.)

Rungpore.

1856.

December 12.

Case of KOONDOO BEWAH and others.

When a sessions judge directs commitment for perjury, the magistrate should not call upon the prisoner for his defence before sending him up for trial.

CRIME CHARGED.—No. 2, perjury, in having, on the 14th May, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the joint-magistrate of Bograh that "Gazee Nussio forcibly entered the house and violated my person, when Neemye Rajbunsee and others seized and beat and severely wounded (half killing him) and carried him towards the south, and that in Assar last Gazee visited me four days," and in having on the 30th August, 1856, again intentionally and deliberately deposed, under solemn declaration taken instead of an oath, before the sessions judge of Rungpore, that "I do not know how Gazee died, I had no acquaintance with him, nor did I ever see him, and that I know nothing of the case." No. 3, in having, on the same date, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the said joint-magistrate "that Neemye and Ram Singh threw Gazee Sheikh down on the ground and beat him with fists and Gazee was groaning, and afterwards said, Neemye and others carried Gazee in the same state, in their arms, towards the south-west direction and that I know Gazee personally," and in having on the said 30th August again intentionally and deliberately deposed under solemn declaration taken instead of an oath before the said sessions judge that "I know nothing of the case, and I do not know Gazee Sheikh, nor do I know how Gazee was killed." No. 4, in having on the same date intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the said joint-magistrate, that "Neemye, Koosul and Ram Singh were beating a person and took him away in their arms southward, and that Gazee was in the habit of frequenting my brother's house under pretence of getting cloth made for him," and in having on the said 30th August again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said sessions judge that "I know nothing of the case, nor did I know Gazee, nor did I see him ever." Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

1856.

December 12.

Case of KOONDOO BEWAH and others.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bograh.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 9th September, 1856.

Remarks by the sessions judge.—In the case noted in the margin* tried by me on the 30th ultimo.

* Government, prosecutor, *v* Neemye and three others, Nos. 23 to 26.

The prisoners now under trial were entered in the calendar as eye-witnesses to the fact of the murder. They were accordingly examined on solemn affirmation, and deposed that they knew nothing of the deceased, of the alleged intrigue which is said to have been the cause of the murder, or of the manner of his death.

The depositions thus taken being directly at variance with those made before the joint-magistrate, I directed their committal for perjury.

They have been committed accordingly.

The nature of the contradictory statements on which the charge is founded are sufficiently set forth in the charge. The depositions taken before the joint-magistrate appear to have been duly recorded, and to have been made after the prisoners had made a solemn declaration to speak the truth.

They plead that their evidence given before the joint-magistrate was tutored and false. I saw no reason when trying the case to believe it to have been otherwise than voluntarily made.

The law officer finds the prisoners guilty, and declares them liable to *tazeer*.

In this finding, I concur, and accordingly sentence the prisoners, Koondoo Bewah, Soomeetra Bewah and Boodho Bewah, to be imprisoned each for three years from this date with labor suited to their sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton). The prisoners admit their contradictory evidence even in their petition of appeal, but ascribe to the influence of the police their depositions before the joint-magistrate; and those before the sessions judge to the influence of the village gomashta. Of these, however, there is no proof, and the perjury was on a point material to the issue of the case. We therefore affirm the conviction and sentence.

We observe that the magistrate, after receiving the direction of the sessions judge by Section 6, Regulation II. of 1807, to commit the prisoners for trial for perjury recorded their answer in defence. This he was not competent to do, as his office was purely ministerial; and he possessed no discretion in the matter of commitment.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

OADEE PRAMANICK.

Rungpore.

1856.

December 12.

Case of OADEE PRAMANICK.

Prisoner was acquitted of perjury in conformity with the precedent cited, as the contradictory statements upon which the charge was based had not been recorded in the same case.

CRIME CHARGED.—Perjury in having on the 17th September, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Rungpore, in the case of dacoity in the house of Hurrishchunder Odheekary, that when the darogah took down the reply of Moochareah defendant, the latter stated, "I did not go to commit dacoity," and on his being further questioned by the darogah as to whether he had gone to commit dacoity he stated, "yes, I did go to commit dacoity," that I do not know as to whether or not from fear of being beaten he made this confession at last, instead of doing so in the first instance; that no one beat him in my presence; but the peadah threatened him saying he had committed the dacoity and told him to say so, and in having on the 23rd September, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the said sessions judge in the case of dacoity in the house of Hureepreah Debbeah that "upon the darogah having questioned Moochareah he stated 'yes, I committed the dacoity;' and that no one did threaten the defendant, nor did any peadah say any thing, the defendant confessed on being questioned by the darogah in the first instance," such statements being contradictory of each other, and on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Offi er.—Mr. J. C. Dodgson, joint-magistrate of Bograh.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 29th September, 1856.

Remarks by the sessions judge.—The prisoner was examined as a witness in the cases of dacoity noted in the margin,* to the confession of Moochareah one of the prisoners.

Moochareah had been seized on the information of other of the prisoners, who had named him as being concerned in both

* Hurrischunder Odheekary, prosecutor, Government co-prosecutor *versus* Goreeboollah and others Nos. 1 to 13.
Hureepreah Debbeah, prosecutrix, Government co-prosecutor *versus* Shagra *alias* Azmut Sheikh and others, Nos. 14 to 25.

1856.

December 12.

Case of OADEE PRAMANIK.

dacoities, and his defence was taken at once by the darogah in the two cases. The question put to the prisoner being, whether he had committed dacoity in the houses of Hurrischunder Odheekary and Hureepreah Debbeah. In reply, he confessed to having committed both dacoities. The prisoner when examined on the 17th September, 1856, deposed that in the morning when the darogah asked Moochareah, whether he had committed the dacoity, he denied that he was then sent to call together witnesses, and on his return about two *dundos* after, the darogah asked him again, when he confessed. That he saw no beating, but that a peadah threatened Moochareah, urging him to confess. His evident intention was to lead the court to the inference, that the confession to which he was called to testify was not spontaneous and voluntary.

On the 23rd September, when examined again in case No 2. regarding this same confession, he deposed that it had been made voluntarily, that he admitted his guilt when first asked by the darogah, and never made any denial of it, that no one used any threat to him, nor did any peadah say any thing to him. The d positions were made deliberately. The statements are directly at variance on a point essential to the merits of the case. The prisoner was therefore sent to the joint-magistrate with instructions to commit him for perjury.

He has been committed accordingly and tried by me with the aid of a jury composed of the native gentlemen whose names are entered in the margin.*

* Kish· Mohun Talookdar.
Muhimachunder Mujoomdar.
Digamber Moittur.

The prisoner pleads *guilty* and alleges that the statements contained in his first deposition are true, and those in his second false.

The jury found a verdict of guilty, in this I concur, and sentence the prisoner to three years with labor.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) It is manifest from the charge that the contradictory statements were not made in the same case, but in two separate cases. We therefore acquit the prisoner under the precedent in the case of Sheikh Keena, decided 15th December, 1854, page 773, part II. which ruled, that when a charge of perjury is based upon contradictory statements on oath, such statements must be recorded in the same case. We direct the prisoner's release.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT

versus

OMUR SYCE.

Nuddea.

1856.

December 12.

Case of OMUR SYCE.

When a sessions judge directs commitment for perjury, the magistrate should not call upon the prisoner for his defence before sending him up for trial.

CRIME CHARGED.—Perjury in having on the 31st March, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the magistrate of Nuddea, that "he had witnessed from a stable thirty paces distant from the spot, Chundermohun giving the beggars at Nikashiparah rice and pice in a certain place, when Eshan came up and said, Tell them go elsewhere; and then drove them off. That there was then a quarrel and assaults committed by *lattials* whom he did not recognise. That both parties lead their opponents and that soon after a gun was fired, but that he could not say by whom." And in having on the 29th August, 1856, again intentionally and deliberately deposed under solemn declaration taken instead of an oath before the additional sessions judge of Nuddea, that "there had been no row or disturbance even witnessed by him on the day in question; that he knew of no quarrel; and that a gun he heard discharged was one being used at the time to shoot a bird." Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Wilful and corrupt perjury.

Committing Officer.—Mr. A. Elliott, magistrate of Nuddea.

Tried before Mr. G. D. Wilkins, additional sessions judge of Nuddea, on the 2nd September, 1856.

Remarks by the additional sessions judge.—In a case decided by this court on the 30th ultimo, it was proved, that after the performance of a *shraud* by the family of the Baboo zemindars of Nikashipara, in this district, there was a serious disturbance resulting in an affray.

The offending Baboos were arraigned before the magistrate as having been the instigators of this offence, and in the trial in the lower court the prisoner in this calendar gave evidence to the effect, that he had from a certain spot at Nikashipara, which he described, witnessed one Baboo (Chunder Mohun Roy) giving the beggars assembled rice and money in a Thakoorbari, when another Baboo (Eshan Chunder) came and drove them off, and that a disturbance and a fight was the result; *lattials* on both sides being engaged and assaulting one another, and a gun being discharged. When required to give evidence in the same

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Case of OMUR SYCE.

case before me, he declared that there had been no row or disturbance, on the day in question, witnessed by him; that he personally knew of no dispute or quarrel; and that a gun he heard discharged was from the direction of the *maidan, and discharged at birds*. The prisoner now declares that he does not remember having made any such statement as was recorded before the magistrate, but cites no witnesses. Before the magistrate he declared that there was a long interval between his two examinations, and that he *had* given two discrepant statements.

In concurrence with the law officer I convict the prisoner of wilful and corrupt perjury on a point material to the issue of the case, in which he was a witness, and I sentence him to three years' imprisonment with labor and irons from this date.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner's deposition before the two tribunals contain manifestly contradictory statements very material to the issue of the case. We therefore see no reason to interfere with the conviction and sentence.

We observe that the magistrate should not, previous to commitment, by direction of the sessions judge, have taken the prisoner's defence, for his office was only ministerial in the case; and he was bound under Section 6, Regulation II. of 1807, to send up the prisoner for trial. As he had no discretion in the matter, it was beyond his competence to call upon the prisoner for his defence.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

JADOO NODA BAGDEE.

Hooghly.

1856.

December 12.

Case of JADOO NODA BAGDI.

The prisoner was convicted and sentenced to transportation for life as having belonged to a gang of dacoits.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 11th November, 1856.

Remarks by the additional sessions judge.—The prisoner was arrested, on the 13th September, 1856, and the same day declared he was ready to confess the crimes with which he was charged, if a little rest were allowed him. On the 19th September, he was formally called upon for his defence in detail, when he admitted he had been concerned as a member of a gang of dacoits in nine dacoities. He afterwards (on 17th October,) admitted two more.

Before me to-day, he repeats his confession, and names, as the dacoities in which he was concerned, thirteen, including all the nine before alluded to. Of these nine (leaving the others out of consideration) it is known that seven were really committed by the reports forwarded in all, and the investigation in one case which took place at the time.

Further, the three approver witnesses entered in the calendar, swear to the prisoner having been with them in seven dacoities, six of which are included in the above nine; and five in the six are known to have occurred. These approvers as to the above dacoities denounced the prisoner in their original confessions recorded before the prisoner's arrest.

I beg to recommend that the prisoner be sentenced for having belonged to a gang of dacoits to imprisonment with hard labor in transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We convict the prisoner upon his own free and voluntary confession throughout, and upon the evidence of the approvers to the occurrence of certain of the dacoities charged, and of his participation in them, of having belonged to a gang of dacoits; and sentence him to imprisonment in transportation for life.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

DOOKHEERAM HAREE (No. 1) AND SUMBHOO HAREE (No. 2.)

Hooghly.

1856.

December 12.

Case of DOOKHEERAM HAREE and another.

The prisoners were convicted and sentenced as having belonged to a gang of dacoits.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seker Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 11th November, 1856.

Remarks by the additional sessions judge.—The first prisoner confesses before me to have joined in the commission of thirteen and the second prisoner of seven dacoities, as per margin.* All these (and a few more) they confessed to before the dacoity commissioner and the deputy magistrate under him on the 28th September and 4th October, 1856, respectively.

* *Dookheeram.*

No. 1, Burral.*
" 2, Shahpore.*
" 3, Dhooluck.*
" 4, Badpore.*
" 5, Sarungpore.*
" 6, Dadpore.*
" 7, Peeugon Dadpore.
" 8, Joojooti.
" 9, Nogoan.
" 10, Mosagaon.
" 11, Kâtgurrah.*
" 12, Dhooluck, 2nd.
" 13, Sarungpore, 2nd.

Sumbhoo.

" 14, Nobogram.
" 15, Bamunpara.*
" 16, Peeugon Dadpore.
" 17, Sarungpore.*
" 18, Burral.*
" 19, Russoolpore.*
" 20, Ajapore.*

Of these no less than ten (marked*) were reported at the time, and are thus known to have occurred. The approver, witness No. 4, Nuffer Bagdee, confessed to two of them (Nos. 1 and 20,) before the prisoners were arrested, on 16th May last.

Witness No. 2, proves that the Kâtgurrah dacoity was really committed as described, and witness No. 3, the same as to the dacoity at Badpore. The approver witness Nuffer Bagdee, named both prisoners in his original confession as participators in the Burral dacoity, and one (Sumbhoo) in the Ajapore dacoity. In the Badpore dacoity (No. 4,) the prisoner, Dookheeram, was denounced at the time by a chowkeedar, who saw him in the act, and in the Kâtgurrah (No. 11,) dacoity and many more; he has been arrested and discharged merely for the insufficiency of the evidence by the magistrate. He was also recognised and denounced in the Shahpore dacoity, No. 2. The Peeugon

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December 12.

Case of DOOKHEERAM HAREE and others.

Dadpore dacoity, to which both prisoners have confessed, was investigated at the time.

I convict the prisoners of having belonged to a gang of dacoits, and recommend they be sentenced to imprisonment with hard labor for life in transportation. The prisoner Dookheeram, was, it appears, a sirdar dacoit; while his fellow prisoner worked either with him or with another well known dacoit leader, Baranussee.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We convict the prisoners on their plea of guilty, and on the evidence as to the occurrence of some of the dacoities, and the participation of the prisoners therein, of having belonged to a gang of dacoits; and sentence them to transportation for life.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND FOKEERCHAND DEY DOSS

versus

RAMCHUNDRO DEY.

Chittagong.

1856.

December 17.

Case of RAMCHUNDRO DEY.

Prisoner convicted of uttering a forged receipt with intent to injure.

CRIME CHARGED.—1st count, forgery, viz. in having fraudulently forged or caused to be forged with intent to defraud Fokeerchand, prosecutor, in this case a receipt for Rs. 165-14, dated the 9th Joist, 1216, M. S., and thereupon fraudulently signed or caused to be signed the name of Fokeerchand, prosecutor; 2nd count, fraudulently prepared or caused to be prepared a false document being a receipt for Rs. 165-14, and thereupon fictitiously and falsely signed the name of Fokeerchand, prosecutor, in the case; 3rd count, uttering the above false and forged document in the office of the register of deeds of this district as a genuine and true document, well knowing at the time that the same was false and fabricated; 4th count, being an accessary after the fact, in having, with a view to benefit a person named Kaleedass, taken upon himself the responsibility to register the said fictitious paper in the register of deeds' office within this district, well knowing at the time that the same was a false, forged and fabricated document; and 5th count, false personation, inasmuch as he for the benefit of Kaleedass presented himself before the register of deeds of this district to register the above-

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December 17.

Case of RAMCHUNDRO DEY.

mentioned deed, assuming the name of Fokeerchand, whilst his real name is Ramchundro.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 18th October, 1856.

Remarks by the additional sessions judge.—The prosecutor stated that in Bysakh of the Mugh year 1216, he obtained in the court of the sudder ameen of Chittagong, a decree against Kaleedass Ghose for the sum of one hundred and sixty-five rupees and fourteen annas, and that in Assin or Kartick of the same year, he was coming to the court to sue out execution thereof, when he chanced on the road to lose his copy of the judgment. He said further that he took out a second copy of the decree and sued out execution, but had since heard that the prisoner Ramchundro, personating him procured to be registered by the register of deeds at Chittagong a receipt. He deposed moreover that he did not grant the receipt filed with the record and marked with the letter A. nor sign the same nor give to any other person authority to sign such receipt on his behalf and had never received satisfaction of the decree.

The mohurrir* of the office of the register of deeds and his assistant† deposed that on the 14th June, 1856, the prisoner, Ramchundro, went to the register's office, represented himself to be Fokeerchand, desired to have the receipt marked A. registered, and declared that he had signed the same with his own hand; but that as the assistant knew his name to be Ramchundro, and the signature on the receipt purported to be made with the pen of Gourhurry Biswas, the false personation was at once detected, and immediately reported to the register, to whom moreover the real Fokeerchand (the prosecutor) afterwards complained of the attempt at registering a forged receipt.

* Wt. No. 7, Abdool Sohobhan.
† Wt. No. 8, Radhamohun Dey.

Two mookhtears‡ proved the voluntary delivering before the magistrate of a confession by the prisoner Ramchundro, which is to the effect that he presented the receipt to be registered and signed the name of Fokeerchand on the copy thereof, but inadvertently omitted to add to the signature "by the pen of Ramchundro."

‡ Wts. Nos. 9, Goluckchunder Gooho.
" " 10, Choitunchurn Kanoongo.

The prisoner's defence was that he committed no forgery, uttered no forged paper, and did not fraudulently personate the prosecutor, but that, at the request of Kaleedass, he took the receipt to the register's office to be registered and there, by desire of the register's mohurrir wrote on the back of the copy of the receipt the signature of Fokeerchand.

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Case of RAMCHUNDRO DEY.

Several witnesses* produced for the prosecution, but examined for the defence, deposed that the receipt was executed by Gourhurry Biswas (brother-in-law of the prosecutor) on payment of a sum of money to him by Kaleedass, the judgment debter, and that the prisoner was not present on the occasion.

* No. 1, Bunghsee.
" 2, Gokoolchundro Ghose.
" 3, Mooruli.
" 4, Ojoodeahram Bhuttacharj.

Five other witnesses† deposed to the prisoner's general good character.

† No. 15, Muddun Ali,
" 16, Mohummud Hasseem,
" 17, Abdool Ali,
" 18, Shumshare Ali,
" 20, Ramdyal,
" 21, Bhobaunychurn.

The law officer pronounced the prisoner guilty of forgery and declared him liable to *tazeer*. The law officer moreover convicted the prisoner on the 5th count of the indictment, which is "false personation."

There was no evidence that the receipt filed with the record was an instrument forged by the prisoner, or that he had any cognizance of its being forged. On the contrary four witnesses present at the execution thereof deposed to its signature by the brother-in-law of the prosecutor and to the absence of the prisoner when it was granted for value received. The false personation, however, was clearly proved; but no evidence was offered that any benefit was therefrom derivable by the prisoner; and the statement attributed to the prisoner that he signed the receipt with his own hand, while it actually purported to be signed by the pen of Gourhurry Biswas, is inconsistent with the supposition of a deliberate scheme of fraud contrived by the prisoner.

Disapproving therefore of the *futwa*, I would convict the prisoner of false personation and name a sentence of six months' imprisonment as that suitable to the offence. This may seem too lenient a punishment, and I should certainly recommend a heavier penalty, but that there seems reason to believe‡ that the money acknowledged to have been received was actually paid, and that the receipt filed with the record, granted by the prosecutor's brother, was only a duplicate of another acknowledgment signed, or at all events authorized and approved by the prosecutor.

‡ Vide evidence of witness No. 2, Gokoolchunder Ghose.

The prisoner had no interest in the fabrication of a receipt by the prosecutor to Kaleedass, with whom it was not shewn that he had any relationship or connection whatever. It may be remarked that the prisoner confessed to have forged the signature of the prosecutor on the back of the copy of the receipt, but with this offence, which may have been committed as he said in ignorance of its character, or at all events without intent to defraud any person, he was not charged.

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Case of RAMCHUNDRO DEY.

I directed the magistrate to call upon the prisoner to furnish bail for his appearance to receive the sentence of the superior Court on this reference.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The moulvee convicts the prisoner of forgery, and the sessions judge merely of false personation; but in our opinion the prisoner is clearly guilty of knowingly uttering the forged receipt with the intention of effecting its registration. He took the forged receipt to the register's office; applied for its registration, as Fokeerchand the grantor of that receipt; and signed the name of Fokeerchand, on the copy of the receipt, which it is usual to leave in the register's office on record. On these facts, we think the prisoner's guilt as an utterer i. fairly deducible. Had he not known that Fukeerchand, was no party to the transaction, his personating that person was an act of egregious folly which could serve no purpose whatever. We convict the prisoner of uttering the receipt with intent to injure the decree-holder, and sentence him to two years' imprisonment with labor.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MR. F. J. FERGUSSON

versus

NUCKCHED SINGH (No. 20,) AND GONDURLAL (No. 21.)

Bhaugulpore.

1856.

December 17.

Case of NUCKCHED SINGH and another.

Finding and sentence of the lower court in a case of embezzlement &c. reversed in appeal: there being no satisfactory evidence under the circumstances.

CRIME CHARGED.—No. 20, 1st count, fraudulently embezzling Rs. 614-5-3; 2nd count, theft of the above sum of Rs. 614-5-3; 3rd count, fraud in having produced a document, dated 8th April, 1856, written in Urdoo, before Mr. Fergusson, stating it was a receipt for Rs. 226, causing it to be read out as such only, and requesting Mr. Fergusson's signature to the said receipt, whereas in addition to the words about the receipt of 226 Rs. there was also an acknowledgment of having cleared all accounts with Nuckched Singh up to date in not having any of the latter part read out, or mentioning it to Mr. Fergusson, he (Nuckched Singh) knowing at the time that he had not cleared his accounts and his purpose in procuring Mr. Fergusson's signature to the document being, that he might produce a receipt which would clear him in case a charge of embezzlement was brought against him. No. 21, accomplice in fraud, viz. in having read out the first part of the above document and wilfully omitting the latter part in order to assist Nuckched Singh,

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in procuring a document which would prove clearance of accounts up to date, while he (Gondurlal) knew the accounts had not been cleared.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 6th August, 1856.

Remarks by the officiating sessions judge.—This case was tried with the aid of a jury* at Monghyr, on the 5th and 6th August, 1856.

* Neamut Ally.
Deonarain Singh.
Khooblal.

The prisoners pleaded *not guilty*.

Mr. F. J. Fergusson, the prosecutor, is employed in the railway; the prisoner, Nuckched Singh, was his jemadar he had acted in that capacity for some time, when Mr. Fergusson, was stationed at Barh; on his transfer to Soorujgurrah about December last, the prisoner accompanied him, and was employed in the purchase of trees required for the department; he used to receive large sums of money for the purpose, but it sometimes happened that the wrong owners attempted to sell trees in such cases, the bargain was cancelled, and the money returned by the jemadar to Mr. Fergusson, for which he granted him receipts, and the amount was placed to his credit. On the 8th April last, the jemadar returned him 226 Rs. the receipt for which was written by prisoner, Gondur No. 21, a moonshee, taken to Mr. Fergusson, read it out to him, purporting to be a receipt for the money returned on account of disputed trees, which he signed as an acknowledgment, recording the amount and date on the endorsement. Mr. G. Lord, witness No. 1, was in the bungalow, which was made of mats, in an adjoining room, the partition between the rooms was made of the same material and only ascended half way up to the roof, he with witnesses, Nos. 4 and 5, distinctly heard the prisoner, No. 21, Gondur, peruse the receipt marked A. but only that portion of it, which referred to the trees, Nuckched Singh being present at the time. This being the usual manner of transacting business, no notice was taken of it, but previous to this occurrence, Mr. Fergusson had frequently directed the jemadar to render in a regular statement of his accounts, the 25th of each month was the period fixed, but the jemadar evaded it. While Mr. Fergusson was encamped at mouzah Jowas on the north side of the Ganges, a chuprassee was sent to call Nuckched Singh for this purpose, he came and made excuses that he had not eaten, and requested permission to be allowed to cook, this leave was granted him, some time elapsed, and Mr. Fergusson, perceiving that the jemadar delayed, sent another chuprassee, who told him, that Nuckched Singh and his peons had absconded, Mr. Fergusson then came into Monghyr, to lodge a

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complaint against him before the magistrate for leaving his service without authority, or settlement of his accounts. The jemadar filed a counter-charge of assault and plundering his property, &c., against Mr. Fergusson. In course of trial, Nuckched Singh produced the receipt Mr. Fergusson had granted him on the 8th April, 1856, when it was ascertained that in addition to the transaction anent the return-money for disputed trees, the latter part of the receipt was an acknowledgment, that a settlement of his accounts had been effected; in fact, it was a receipt in full of all demands. Mr. Fergusson, on hearing the whole of the receipt read out to him in the magistrate's court for the first time, at once declared that the latter part of it had been omitted, when read to him, and it was a fraudulent attempt of Nuckched Singh, in collusion with Gondurlal, the moonshee, to make it appear, that the accounts between them had been settled, whereas he had frequently ordered him to attend and adjust them, which he refused to do and eventually absconded. The prisoner Nuckched, also considered, that if he was sued in the civil court, he would by these deceptive means prove non-liability by the production of the fabricated receipt. Mr. Fergusson prepared an account from the records of his office, which is filed and sworn to be correct, there appears a balance of Rupees 614-5-3, against him, which the prisoner, No. 20, has failed to explain or in any way account for, except by frivolous allegations, and denying that he received the amount, which will be referred in his defence.

The fabricated receipt has been produced in court, marked A. which witnesses Nos. 4 and 5, declare was presented to Mr. Fergusson, who signed it, and the latter portion was omitted to be read by the moonshee, Gondurlal, otherwise the deception would have been detected at once, as Mr. Fergusson, (although not thoroughly versed in the language) would have caused the moonsiff to explain any irrelevant matter, which was introduced into the receipt had the whole of it been read to him. The prisoner, Nuckched Singh, filed the receipt in the magistrate's court to prove that a settlement of accounts had taken place, whereas he was aware at the time, that no such adjustment had been effected. He admits that Gondur, his accomplice, wrote the receipt, and he was present when it was read, so that it is apparent they deceived Mr. Fergusson, by obtaining from him a receipt in full of all demands, which they knew to be false and fabricated, when the accounts had not been settled.

The documentary evidence for the embezzlement is the account filed by prosecutor, who has sworn, as also Mr. G. Lord, witness No. 1, to its correctness, and that prisoner used to receive large sums of money for specific purposes amounting in the aggregate to Rs. 15,873-15, from the date he took charge at Soorujgurrah in December last, to the date of his absconding,

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every item has been brought to his credit, and a balance of Rs. 614-5-3, is shewn against him, which he is unable to explain.

The prisoner pleads in justification of his conduct that he did not receive the amount, which he is accused of having embezzled, he certainly did purchase trees, but several large items are not entered in the accounts, which Mr. Fergusson paid to the owners himself, two sums of 5,200 Rs. and 2,750 Rs. were disbursed in this manner, which is proved by witnesses Nos. 12 and 15. I would here observe that the account rendered is one exclusively of money entrusted to the prisoner (in whom the prosecutor had every confidence) for certain purposes, the purchases by Mr. Fergusson are separate transactions, such items could not be included in the account, thus the plea cannot be admitted in exoneration, it remained with the prisoner to explain to the court how he disposed of the balance against him, this he has failed to do before both tribunals, and in addition to the embezzlement, he has committed fraud, by obtaining Mr. Fergusson's signature to a receipt in settlement of accounts, which he knew was false and fabricated, and through his accomplice, Gondurlal, a portion of this receipt was omitted to be read, which, if it had not been detected, might have involved Mr. Fergusson in difficulties and caused him to be held responsible for the amount to his employers, thus the prisoner Nuckched Singh, has not only committed a breach of trust, but added to his guilt by this nefarious transaction in deceiving his master.

Gondurlal merely denies writing and reading the receipt, and further alleges that he was not Mr. Fergusson's servant at the time when Nuckched Singh absconded, but appointed subsequently, he merely served as mookhtar in a case instituted in the moonsiff's court.

The witnesses for the defence having failed to establish the prisoner's innocence, the jury returned a verdict of guilty against them both, in which I concurred, and observing that of late frequent fraudulent transactions have occurred in the railway department, I considered the prisoners, for example sake, should be severely punished, in the hope that it may deter others from committing similar offences, and sentenced them accordingly.

Sentence passed by the lower court.—No. 20, to seven years' imprisonment with labor and irons and under Act XVI. of 1850 to pay a fine of 614-5-3 as compensation for the loss sustained by Mr. Fergusson, prosecutor. No. 21, to three years' imprisonment, without irons, and to pay a fine of one hundred rupees, on or before the 20th August, 1856, or in default of payment to labor until the fine be paid or term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The evidence in this case is very defective. The charge of embezzlement against Nuckched

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Singh is supported by an account paper filed and sworn to by the prosecutor. This account purports to enumerate the different payments made at different times to the prisoners; and by far the greater proportion of the amount so paid to him is covered by delivery of *trees* or return of the sums to be accounted for, leaving 614 rupees, with the embezzlement of which the prisoner is charged. No vouchers of the prisoner, however, are filed in corroboration of any of these advances. It is impossible therefore to receive them as authentic, simply on the oath of the prosecutor. It is admitted that vouchers were given by the prisoner; it is therefore the more remarkable that they were neither submitted nor called for in support of these accoun's. The evidence, as it stands on the record, proves nothing. It is therefore unnecessary to refer to the defence set up by the prisoners. We acquit the prisoners and remit the fine imposed upon them by the sessions judge.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

DEENOO HAREE.

Hooghly.

1856.

December 17.

Case of DEENOO HAREE.

Prisoner a professional dacoit transported.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, at Hooghly.

Tried before Mr. R. P. Harrison, officiating sessions judge of Hooghly, on the 14th November, 1856.

Remarks by the officiating sessions judge.—The prisoner pleads guilty. Before the dacoity commissioner, he confessed to having belonged to a gang of dacoits, and mentioned thirteen dacoities, in which he stated that he had been engaged.

Of the dacoities enumerated in the confession, the records of three have been submitted by the committing officer.

1st dacoity, in the house of Lochun Sahoo (father of Koochil Sahoo) committed on the 23rd July, 1853. Witnesses Nos. 1 and 2, prove the occurrence of this dacoity. The prisoner was apprehended at the time, having been denounced by one Chidam Roy, who had confessed, but he was eventually released by the magistrate.

2nd dacoity, in the house of Bhugobuttychurn Dhoba, on the 13th of February, 1855. Witnesses Nos. 3, 4 and 5, depose to the occurrence of this dacoity.

3rd dacoity, in the house of Boshtum Doss Poddar, on the

19th February, 1855. The occurrence of this dacoity, in which several persons were arrested and punished is proved by witnesses Nos. 6 and 7. 1856. December 17. Case of DEENOO HAREE.

It is proved by the evidence of witnesses Nos. 8 and 9, that the confessions of the prisoner before the dacoity commissioner were freely and voluntarily made. Before this court, the prisoner admits the truth of his foujdary confessions and that he is a dacoit by profession.

I convict the prisoner on his own confession of having belonged to a gang of dacoits, and recommend that he be sentenced to transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The commission of the dacoities referred to have been proved by evidence to the several occurrences mentioned, and the prisoner has pleaded guilty throughout. We confirm the conviction of the lower court and sentence him to transportation beyond sea for life.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

ON THE PART OF BABOO NUNDOCOOMAR SHEIKH HYDER ALIAS HAZAREE (No. 7,) AHMED SIRDAR BHOOYAH (No. 8,) SHEIKH KADEER SIRDAR (No. 9,) AND JAMEER SIRDAR (No. 10.)

GOVERNMENT

versus

ON THE PART OF BABOO ISHANCHUNDER SHEIKH NEWAZ SIRDAR (No. 11,) MUDDEEN* SIRDAR BEARER (No. 12,) AZEEM MAHOMED SIRDAR (No. 13,) SHEIKH DURBARA SIRDAR (No. 14,) BULRAM CHUNG SIRDAR (No. 15,) SHEIKH LUSHKER SIRDAR (No. 16,) AND BEHAREE SINGH (No. 17.)

Dacca. 1856. December 17. Case of SHEIKH HYDER and others. Appeal rejected.

CRIME CHARGED.—1st count, wilful murder of Jaun Mahomed of the first party; 2nd count, mutual affray attended with the culpable homicide of Jaun Mahomed of the first party and wounding of Newaz and Kiramdee of the other party.

CRIME ESTABLISHED.—Mutual affray attended with the

* Acquitted by the lower court.

1856.

December 17.

Case of SHEIKH HYDER and others.

culpable homicide of Jaun Mahomed of the first party and wounding of Newaz of the second party.

Committing Officer.—Dubbeeroodeen Mahomed, deputy magistrate of Moonsheegunge.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, under date 28th August, 1856.

Remarks by the officiating sessions judge.—It appears from evidence given during this trial, that Baboos Nundcoomar and Ishanchunder, live in the same *baree* or homestead. Not far from their house is a patch of land claimed by Nundcoomar as part of his estate and claimed by Ishanchunder, on the part of his servant Juggutchunder, by virtue of a mortgage.

On the morning of the 11th of May, Jaun Mahomed deceased and the prisoners Nos. 7, 8, 9 and 10 and others on the part of Nundcoomar, went to the field to protect their ryot whilst ploughing, they were met by prisoners Nos. 11 to 17, and others on the part of Ishanchunder. An affray ensued in which Jaun Mahomed was killed by a spear-wound and prisoners Nos. 7 and 11 wounded.

It is difficult to get trustworthy evidence in cases of this nature, but it is very clear that the affray did take place, and, I think, is equally well proved that the prisoners under trial were engaged in it, they are named by the witnesses and recognised. The defence made at the thannah by the prisoners Nos. 7, 8 and 11, implicates the other prisoners, and though taken by itself, such implication could not be received as proof, still it corroborates the testimony of the witnesses.

The instigators of this affray have escaped unpunished. The parties immediately concerned in it, had no interest in the crops of the disputed land, and the value of the property is so trifling that I am unwilling to believe that the parties interested in disputing its possession had any intention of prosecuting the feud to a fatal issue. There is no evidence to show by whose hand Jaun Mahomed was speared.

The prisoners deny their guilt but fail to establish their innocence.

The law officer finds the prisoners guilty on the second count, and his *futwa* declares them liable to *tazeer*.

I concur with the *futwa*, and as I consider all parties equally guilty, I sentence them each to seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The appellants on each side only plead that the opposite party were the aggressors, but this is not sufficient to shake the general credibility of the witnesses deposing to the affray, or to call in question the finding of the court on that evidence. We see no reason to interfere and reject their appeal.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

POONTEERAM CHUNGO (No. 1,) AND MONEMOHEENEE CHUNDALEENEE (No. 2.)

24-Pergunnahs.

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December 17.

Case of POONTEERAM CHUNGO and another.

Appeal rejected.

CRIME CHARGED.—Incest.

CRIME ESTABLISHED.—Incest.

Committing Officer.—Mr. J. H. Mangles, officiating joint-magistrate of Baraset.

Tried before Mr. G. D. Wilkins, additional sessions judge of the 24-Pergunnahs, on the 4th August, 1856.

Remarks by the additional sessions judge.—The two prisoners, who have been for some years, cohabiting together, and have had several children, are charged with *incest.* The male prisoner is the female prisoner's uncle, being her mother's own brother, and from a *bywastch* I have obtained from the Hindoo law officer, their sexual commerce is from their being within the prohibited degrees for marriage, as much incest with Hindoos as it is with Christians and Mussulmans. The offence is fully proved by the direct evidence adduced and by the prisoner's admissions; and the Mahomedan law officer, who has tried the case with me, (a jury not being procurable) has pronounced the prisoners in the words of the law, (Regulation XVII. 1817, Section 6,) to have been legally convicted.

This offence is punishable by a sessions judge on the prosecution of Government as "Zina" under Regulation XVII. 1817, Sections 1 and 6, and Construction No. 865. It is difficult to understand why in the precedent quoted by the magistrate, of 15th January, 1852, (and which is the only one, I can find in the books,) the sessions judge referred the case to the Sudder Nizamut for sentence instead of passing it himself.

The prisoners have brought forward two witnesses to prove that the woman, Monemoheenee, was turned out of her father's house, one of the witnesses declares for bad conduct, while the other does not know the reason. This is no extenuation. The uncle was not bound to shelter his niece, and if he thought proper to do so, he *was* bound to treat her as a niece, and not as a concubine.

The male prisoner, Poonteeram, is sentenced to five years' imprisonment, with hard labor; and the female prisoner to three years, with labor suited to her sex, commutable to a fine (in her case only) of 10 Rs. payable in fifteen days.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T.

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Raikes and J. H. Patton.) We thought it necessary to call for a *futwa* from the Kazi of this Court and a *bywasteh* from the pundit as to the legality of marriages between parties standing in the same relation to each other as the prisoners in this case, and find their opinions to be, that such marriages are forbidden as incestuous. There is no ground therefore to impugn the legality of the order of the sessions judge, which we accordingly affirm.

The precedent referred to by him is not quite in point, as the parties convicted in that case appear to have been Christians, and neither the Hindoo nor Mahomedan custom would have been applicable to them.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND NUSU BEWA

versus

MONOHUR SINGH (No. 14,) BHOLA NUSHYO (No 15,) TAJ MAHOMED (No. 16,) AND BALA NUSHYO (No. 17.)

Rungpore.

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Under the circumstances, in concurrence with sessions judge, prisoner was acquitted of culpable homicide.

CRIME CHARGED.—1st count, wilful murder of Kalay Mahomed; 2nd count, aiding and abetting in the wilful murder of Kalay Mahomed; 3rd count. culpable homicide of Kalay Mahomed; 4th count, aiding and abetting in the charge mentioned in the third count.

Committing Officer.—Mr. W. L. Robinson, officiating magistrate of Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 29th October, 1856.

Remarks by the sessions judge.—The defendants are represented to have seized the deceased, dragged him from his house and to have taken him to a tree near the house of Bhola Nushyo, prisoner No. 15, where he was found dead.

The defendants admit that on the complaint of Bhola to his landholder, a burkundaz of the latter was sent to bring in the deceased, but deny that any violence was used.

The statement of the prosecutrix is inconsistent with that made by her before the magistrate and with the evidence given by the witnesses. The evidence as to the amount of violence shown towards the deceased is, that Monohur Singh, (who died before the case came on for trial before this court) put a *gumcha* round his neck, that Taj Mahomed held him under the arm and that Bala Nushyo pushed him from behind, now and then

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striking him a blow with his fists (as stated by one of the witnesses.) But neither this evidence, nor the marks found upon the body as deposed to by the witnesses, namely a slight wound on or immediately under the chin, and a bruise over the loins, are, in my opinion, sufficient to raise a sufficient legal presumption that death was caused by violence, particularly in the face of the evidence given by Madaree and Sookroo, two of the witnesses for the prosecution. The appearances observed by the chowkeedars, who gave the first information of the event at the thannah, as deposed to bring him before the magistrate, and evidence of the witnesses for the defence, who depose that they saw him where he died, suffering from cholera.

No. 1, Sudoo Chowkeedar.

No. 2, Madaree, „ 3, Sookroo.

When the darogah came, decomposition had already set in and when the body arrived at the station had gone so far, that it could not be examined, the swollen appearances observed by the darogah cannot, therefore, in my opinion, be safely attributed to violence.

The rain, which he states it likely might have effaced the marks of blood, may as probably have effaced other marks which might have favored the defendant's statements. There was no apparent reason why any unnecessary violence should have been shown to deceased, it is not alleged that any enmity existed between the deceased and prisoners.

No. 11, Neoree Bewa.

Neoree Bewa, witness No. 11, who called by the prosecutrix to prove that deceased had been previously in good health, and from whom she stated she heard of his murder, deposes and her deposition agrees with that given before the magistrate, that deceased had been ill for several months before and had only partially recovered and that she heard he had died of cholera, and had never stated any thing to the prosecutrix about his having been murdered.

The evidence leaves on my mind, at all events, a doubt whether deceased's death may not have been the result of disease. It may possibly have been hastened by his having been dragged along in the way described; but this cannot be ascertained, and is not to be rashly presumed.

Futwa of the law officer.—The law officer acquits on the charges entered in the calendar, but finds the prisoners guilty, on strong presumption, of causing the death of the deceased by violence and ill-treatment, and declares the prisoner liable to discretionary punishment.

Opinion and recommendation of the sessions judge.—This I must, I suppose, take to be in effect a conviction of culpable homicide. But as I do not think there is any sufficient proof of the

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prisoners having been guilty of such a crime, and as there is no count on which they could be convicted of assault and ill-treatment, they are, in my opinion, entitled to an acquittal. This difference of opinion between myself and the law officer renders it necessary that this case should be laid before the superior Court for their orders.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Such evidence as there is on the record, regarding the treatment of the deceased on the part of the prisoners, is not sufficient to account for his sudden death as the consequence of that treatment; and it would be very unsafe to receive the mofussil *sooruthal* in proof of marks of violence on the body, as having been inflicted before death. We agree with the sessions judge in deeming the evidence insufficient to warrant a conviction; and acquitting the prisoners, direct their release.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND SHUHWOOLLA MUNDUL

versus

MOLAM KHAN (No. 1,) AINOOLLA MUNDUL (No. 2,) ZUMEER KHAN (No. 3,) ZUHOOR MAHOMED (No. 4,) KISHORE MAHOMED (No. 5,) KHEIRDEE MUNDUL (No. 6,) ZUHOOR KHAN (No. 7,) SHADAREE MUNDUL (No. 8,) NAIMOOLLAH PRAMANICK (No. 9,) GEDUR DOSS (No. 10,) LAUL KHAN (No. 11,) CHAMAR NUSYO (No. 12,) AND ZENAYETOOLLA ALIAS DEAMUTOOLLA (No. 13.)

Rungpore.

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Case of MOLAM KHAN and others.

Prisoner convicted of riot and violent assault.

CRIME CHARGED.—1st count, wilful murder of Buranoollah Mundul; 2nd count, aiding and abetting in the crime charged in the first count; 3rd count, riot in which the death of Buranoollah Mundul was caused by severe beating and other ill-treatments, and 4th count, aiding and abetting in the crime charged in the 3rd count.

Committing Officer.—Mr. W. L. Robinson, officiating magistrate of Rungpore.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 28th October, 1856.

Remarks by the sessions judge.—It appears from the evidence, that on Sunday the 18th May, Buranoollah (deceased,) farmer of Dowlut and other villages applied to the darogah of thannah Molung for the assistance of the police under Clause 4, Section 27, Regulation XX. 1817, in distraining the property of Molam Khan (prisoner No. 1,) of Taznuggur and other ryots on account

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of alleged arrears of rent. The darogah was at the time sick. The next morning the mohurrir and two burkundazes accompanied Buranoollah and his party to Taznuggur and attached the property of Molam Khan and Jhapur Khan, having done which without meeting with any opposition and without being forced to the necessity of effecting a forcible entry, the party returned home at once, the mohurrir who was on horseback and the burkundazes who accompanied him going on ahead. Buranoollah and his party were returning leisurely, but had proceeded but a short distance, when they heard behind a shouting of mad dog, mad dog. Buranoollah looking back, saw the crowd hallooing and seeing no dog within view, at once took the alarm, and striking off the main road to the thannah, ran off to the east intending to make his way thither by that route, (as his companion Shaduck Mahomed witness No. 5, asserts,) but finding his pursuers rapidly gaining ground he took refuge in the house of Jureep Mahomed, witness No. 7, from whence he was dragged by the rioters, pommelled well with fists and sticks, and at last thrown down under a tree standing in the midst of a ploughed field belonging to Shaduck Mahomed, witness No. 5.

The rioters or the main body of them then retreated, but for a short distance only, when Molam Khan, prisoner No. 1, Shadaree, prisoner No. 8 and Zenayetoolla prisoner No. 13, returned to see whether he was still alive; as he lay there stretched on his back, Molam, prisoner No. 1, gave him a blow with a thick club on the head, and Shadaree taking it from him, struck him on the chest using the club in the way a paviour does his rammer, Zenayetoolla, then took the stick from his hands and hit him a similar blow on the chest, an alarm was then raised that the police were coming when the prisoners one and all decamped. The mohurrir coming up, took Buranoollah to the thannah where under a tree in front of it he recorded his declaration. Buranoollah was at the time aware of the danger he was in, and the declaration being proved, was admitted as evidence under the provisions of Section 29, Act II. 1855. He mentioned all the prisoners at present under trial, as having been concerned in the riotous attack upon himself, with the exception of Gedur Doss, but made particular mention only of the blow inflicted on his head by Molam Khan.

The eye-witnesses Nos. 1, 2, 3, 4, 5 and 6,* went with deceased to Taznuggur to assist in the attachment, and were returning with Buranoollah; when the first alarm was raised, they concealed themselves in patches of bamboo jungle in the immediate neighbourhood or in the adjoin-

* No. 1, Ramnath Doss.
„ 2, Emambux.
„ 3, Gedur Nusyo.
„ 4, Moenoolla.
„ 5, Shaduck Mahomed.
„ 6, Dost Mahomed.

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ing houses from which they must have had full opportunity of witnessing what occurred. They, from their position as servants of the farmer, must have been well acquainted with the persons of the ryots, they have given consistent evidence throughout, except that in their statement made before the mohurrir they did not mention the blows inflicted by Jhadaree or Zenayetoolla. As the evidence given by witnesses in the mofussil is not, however, recorded at length by the police, but under Circular Order No. 138, dated 16th June, 1843, a short summary only is to be given, the omission in what is admitted is a mere abstract of a fact afterwards deposed to, is no ground for rejecting the evidence as to that fact. In the statement made to the mohurrir, mention only of the blow struck by Molam is to be found, but this was doubtless thought at the time to be the cause of death, and it may be, therefore, that the mohurrir considered it sufficient to mention the evidence as to who had inflicted the supposed fatal blow. The omission of any mention of any particular blows received from Shadaree and Zenayetoollah in the dying declaration of the deceased, may be easily accounted for, on the supposition that the blow on the head stunned him as it most probably would.

Prisoners Kheirdee Mundul No. 6, Shadaree Mundul No. 8, Naimoollah No. 9, Gedur Doss No. 10 and Zenayetoollah No. 13, retained in their defence two of the vakeels of this court, while no counsel appeared on the part of the prosecutor or Government. The witnesses stood the test of cross-examination well, with the exception of the first, Ramnath, who got a little confused. The few discrepancies in the evidence given before the criminal court, and in this, may be fairly attributed to the length of time the case has been pending. The slight difference between the account of the different witnesses do not, in any way, tend to shake my confidence in the general accuracy of the evidence given by them, but rather serve to shew that they have not combined together to get up a case. They may be naturally expected in witnesses viewing the same occurrence from different points.

No. 7, Jureep Mahomed.—Witness No. 7, was working in the neighbourhood of the house in his field, when the rioters surrounded it and dragged out deceased.

No. 8, Sootoor.—Sootoor, witness No. 8, is a neighbour, but though he admitted seeing the rioters and hearing from them that Buranoollah had been beaten, he denied that he had witnessed the actual assault or seen Buranoollah at all on that day, as he had distinctly sworn to having seen Buranoollah beaten and thrown down in the field in his deposition before the magistrate, I directed his commitment for perjury. That the deceased's death was caused by extreme violence, the deposition of the civil assistant surgeon leaves no room for doubt.

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No. 12, *G. K. Poole, Esq., civil assistant surgeon.*—He found the chest much flattened, his ribs almost without exception broken, his abdomen bruised, a wound, not of so severe a nature, however, as to account for his death, on the head, and severe bruises on other parts of the body. The sharp edges of the fractured ribs had entered the lungs. In his opinion the injury to the chest was the cause of death, and death he thought must have occurred within a short interval. On being informed of the nature of the evidence as to the nature of the violence and treatment to which deceased had been subjected, he expressed his opinion, that the injuries that he had received might have been caused in the way stated, though he thought it likely that more violence must have been used than the two blows deposed to as having been inflicted on the chest, to cause the fraction of all the ribs in the manner described. He did not consider it likely that the ribs could have been thus fractured by any blows inflicted while he was standing, or being dragged along before being thrown to the ground, unless some compression from sticks before and behind had been used, which would require much force and was therefore not so probable. The evidence would seem to preclude the idea of any compression, such as is suggested as a possible cause, having been used and had it been, deceased would doubtless have mentioned it. I can but therefore conclude that the injuries to the chest were inflicted after deceased had been thrown on the ground, probably some of the ribs may have been broken before the last three blows were struck, but there can be but little doubt that blows struck with the weapon and in the way described, would be very likely to break the ribs or to drive them into the lungs as described.

The prisoners' defence is that they were at their own houses or fields at the time, or in different villages; that the declaration of Buranoollah filed with the record is not his genuine declaration, but has been substituted for it by the mohurrir. That the parties actually concerned and named by Buranoollah were arrested but released by the mohurrir, in collusion with the prosecutor, on receipt of consideration, it was stated that a case had been instituted in the magistrate's court. I therefore sent for the case, but find there is no complaint against the police or the prosecutor. One Phool Mahomed and two others were accused of extorting money from different parties under a threat of having them arrested for this murder. But the magistrate dismissed the case, deeming it false and only instituted with a view to assist the prisoners in this case in their defence.

Be that as it may, however, the extortion of the money is alleged to have taken place four days after the murder, and as the dying declaration of Buranoollah was sent into the magistrate, as it would appear, on the very day of the murder (his order passed therein dated the 20th, shews that there could

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have been no delay), there could have been no time for the getting up of a false case.

Another objection urged is, that the signature of Jurreop Mahomed one of the attesting witnesses is not attached to it. To this objection I attach no value whatever, Jurreep in the magistrate's court did not state that he had himself signed it, and here he stated that he was but a learner and his signature very *cutcha.* This is true particularly as regards his signature at the foot of his deposition before the magistrate. He has since slightly improved. I do not think there is any reason to misdoubt the declaration because of the want of his signature thereto. It is further urged that the signature does not resemble that of Buranoollah ; but the vakeels, though I waited for some time for some papers they alleged to have bearing his signature, were unable to produce them. Naimoollah and Zenayetoollah requested that some witnesses, who could swear to his signature should be sent for, and the latter requested that the darogah should also be examined as evidence against the mohurrir. They represented that they had petitioned the magistrate for the attendance of these witnesses, but admitted that their petitions were filed before the commitment of the case. I have looked all through the several petitions filed and find that not only is this not the case, but that they accused the darogah conjointly with the mohurrir of having trumped up the case against them. Further, I find no allusion in their defence before the magistrate to any substitution of a spurious for the genuine declaration, nor in their petition either, though they did then complain of the deposition having been taken at the thannah instead of on the spot where the deceased was found lying, I could not of course comply with their request to call other witnesses, their application should have been made before the trial commenced. Neither would a comparison of signature or evidence as to hand-writing be of any use, for it is not to be supposed that a man dying from injuries just inflicted of the severe nature described, would be able to write as he was used in the full enjoyment of health and strength. The very nature of the deposition indicates I think its genuineness. The deposition of one of the rioters as Zuhoor 2nd, without having made any mention of a Zuhoor previously is likely enough to have been made by a man in deceased's condition, but a mistake little likely to have been made in a declaration got up for sake of proving a case against the prisoners.

The law officer rejects the evidence adduced on the part of the prisoners, and I agree with him in thinking it unsatisfactory and the *alibis* plainly got up to secure their acquittal.

The only prisoners who urge that they were at any distance from the scene of the murder are Shadaree and Zenayetoollah, the latter states that he was sent for by Beng Mirdha in conse-

quence of the zemindar having issued an order for the cancelment of the lease.

As this is what the prisoners had been aiming at, if notice had been sent as stated by Beng Mirdha to all the munduls of the villages, I have no doubt that the life of Buranoollah would have been saved. The pykes who came for Shadaree, however, say they were charged with a message to him only and there is no reason why he should have been the only one summoned on the occasion. There are other discrepancies also in the evidence.

Zenayetoollah states that he had gone to visit a relation about four *coss* off. But the detail of what they did on the road, and on the return, given by one of his alleged companions is very different to that given by the other.

Ainoollah Mundul, prisoner No. 2, had some conversation with the mohurrir on his return to the thannah, but his house is so near to the scene of the murder, that he may still have taken a part in the attack, and the evidence is strong against him.

The law officer finds Moleem No. 1, Shadaree No. 8, and Zenayetoollah *alias* Deanutoollah No. 13, guilty of culpable homicide, and the rest of the prisoners guilty of aiding and abetting in the culpable homicide.

Opinion of the sessions judge.—This finding is grounded on there being no proof of any deadly weapon having been used. But taking the facts established by the evidence to be true, the crime in my opinion clearly amounts to wilful murder. Whatever complaints the ryots might have to make against the treatment of them by deceased, he was, when set upon and beaten in this cruel manner, just returning from exercising his legal powers of distraint and had given no provocation which can in any way be held to extenuate the crime of the prisoners. I think too that the attack from the large number engaged in it, from the rapidity with which it followed the departure of the police, and from the body of rioters being ryots of different villages must have been all planned before hand. Probably the expectation of some such attack was the true cause of the application for the attendance of the police amlahs; that the rioters were aware of the intended visit of Buranoollah, on the Monday is very probable, and that a riot on the spot was only prevented by the presence of the police is nearly certain.

Recommendation of the sessions judge—I would therefore convict the prisoners Moleem Khan prisoner No. 1, Shadaree No. 8, and Zenayetoollah *alias* Deanutoollah No. 13, of wilful murder. But under all the circumstances of the case would recommend that the extreme penalty of the law be remitted, and a sentence of imprisonment in transportation beyond sea for life be passed upon them.

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The other prisoners I would convict of aiding and abetting in the wilful murder of Buranoollah and sentence them as follows:

Ainoollah Mundul, prisoner No. 2, Zumeer Khan, prisoner No. 3, Zuhoor Mahomed, prisoner No. 4, Khardee Mundul, prisoner No. 6, Zuhoor Khan, prisoner No. 7, Naimoollah Pramanick, prisoner No. 9, Laul Khan, prisoner No. 11, Chamar Nusio, prisoner No. 12, to fourteen years' imprisonment with hard labor.

Kishore Mahomed No. 5, and Gedur Doss No. 10, are old men, the former especially emaciated by disease, though I have no doubt that they were present on the occasion they must have been physically unable to take any very active share in it. I think a sentence of five years imprisonment with labor suited to their strength will meet the requirements of justice in the case.

I beg to inform you that the prisoner Kishore Mahomed No. 5, died in hospital after the trial.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We think the evidence in this case fully trustworthy to the extent detailed at the thannah. At that time there had been clearly no sufficient opportunity to concoct a false charge against these prisoners, and the provocation given was the attachment of Moleem Khan's property on the day of the occurrence. We convict all the prisoners of riot and violent assault of deceased, of which he died shortly after. The *post mortem* examination leaves no doubt that the reckless severity of the illtreatment has not been exaggerated: but there seems to be no reason to attribute the deceased's death to the particular acts of prisoners Nos. 1, 8 and 13, and we entertain considerable doubt of that part of the evidence which describes these prisoners as returning to the spot with the wilful intention of depriving Buranoollah of life, after the other assailants had left him. We sentence the prisoners to fourteen years' imprisonment with labor in irons, with exception to the prisoner No. 10, whom, for the reasons given by the sessions judge, we sentence to five years' imprisonment with labor suited to his strength. We observe that the prisoner No. 5, is reported by the sessions judge to have died since the reference to this Court.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MUSST. SACHOONEE BEWA

versus

MOOCHEERAM (NO. 1,) OODYE CHUNG (NO. 2,) AND BULLYE CHUNG (NO. 3.)

Dacca.

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Case of MOOHEERAM CHUNG and others.

Prisoners acquitted of murder, the evidence being not trustworthy.

CRIME CHARGED.—Wilful murder of Joynath Chung, son of Sachoonee Bewa, prosecutrix.

Committing Officer.—Mr. C. Jenkins, officiating magistrate of Dacca.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 27th October, 1856.

Remarks by the officiating sessions judge.—It appears from the evidence for the prosecution that deceased entered the hut, where Indermonee was sleeping, on the night of the 14th July. He was attacked by Moocheeram Chung, (prisoner No. 1,) the father and Oodye Chung (prisoner No. 2,) the brother of Indermonee, he succeeded in getting away, jumped into the inundation water which surrounded the house and swam to a distance of about one hundred yards, the prisoners Moocheeram and Oodye (Nos. 1 and 2,) got the prisoner Bullye Chung (No. 3,) to join them, and the three men started in pursuit in Bullye's boat, they overtook deceased and knocked him on the head, the man was either drowned or killed by the blows inflicted on him and then the prisoners got the body on board the boat and carried it away. Such are the main facts of the case.

There are discrepancies in the evidence of the witnesses, but not sufficient to make me reject their testimony.

The witnesses* see a man plunge into the water, they see him followed by men whom they know are bent on maltreating him, they see the figures through the fitful light of the partially obscured moon, and they hear the sound of blows falling on the water, they witnessed the murder, but could hardly have distinguished by whom the blows were struck or by whom the boat was guided.

* No. 11, Dagee Bewah.
,, 12, Daoree Bewah.

The depositions of Dagee and Daoree (witnesses Nos. 11 and 12,) recorded by the mohurrir Brijonath in the magistrate's court are counterparts one of the other, it must have been drawn from the witnesses by leading question, the examination of the witnesses by the officiating magistrate elicits the real knowledge which each witness possessed of the circumstances attendant on the murder. The evidence for the prosecution is corroborated by the statement of Bullye Chung (prisoner No. 3.) It is very

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probable that Bullye Chung did not take so active a part as the other prisoners in the actual perpetration of the murder, still I consider him equally guilty. He at any rate had no wrong to revenge, and he could easily have hindered the murder by refusing to lend his boat. Even if he were under the influence of fear, the boat was tied by a rope to the bank and he might have delayed getting it ready till their intended victim had had time to hide himself from their pursuit. So far from throwing any obstacle in their way, he appears to have given them most efficient aid.

The prisoners Moocheeram and Oodye (Nos. 1 and 2,) deny their guilt throughout, the prisoner Bullye (No. 3,) denies in this court and states that his admissions at the thannah were extorted by maltreatment, and that he was induced by fear to make the same statement before the magistrate. I do not credit his present defence, it is unsupported by evidence and is in itself improbable.

The law officer convicts the prisoners of culpable homicide, and declares them liable to *tazeer*.

I consider the prisoners accomplices in wilful murder of Joynath Chung, and on consideration of the circumstances of the case, recommend that they be imprisoned for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) There are circumstances in this case, which appear to us to throw great doubt on the credibility of the witnesses on the part of the prosecution. In the first place, the body is not forthcoming. It is alleged that some bones and human hair, found in the jungle near the village, are supposed to be the remains of the deceased, Joynath Chung. Two witnesses depose to having seen and recognised his corpse in that place on a previous date; but these witnesses were not brought forward, until some days after the other witnesses had deposed to the alleged circumstances of the murder, and it was by no means through their statement that the remains of Joynath were traced. On the contrary, the discovery of those remains seems to have induced them to have come forward, and hence we incline to the belief that the evidence was deemed necessary to identify the body, and was made up in consequence. The neighbours do not speak to any previous intimacy existing between the deceased, and Indermuni, and it seems most improbable that without such an inducement he should have burst into her house at night with a criminal intent, when all her family were at hand to protect her. It is not stated by the police that any influence was used to conceal the crime or protect the prisoners; and if their account of the case is to be believed, two women had witnessed the murder, and two or three persons had seen and recognised the

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body; yet it was not until the 19th, i. e. five days after the occurrence, any clue was obtained as to the perpetrators of the crime; and then without any apparent reason, the most minute circumstances, connected with the death and disposal of the body, are brought to their knowledge, in the first place by the daughter of one of the prisoners, and then by the confession of one of the prisoners. This confession, though repeated before the magistrate, is, in our opinion, worthless, as evidence in the case. The prisoner himself declared at the sessions that he was made to state, what he did, by the police; and his confession is so guardedly worded as to any participation on his part, and so directly criminatory of the other prisoners who have pleaded *not guilty* throughout, that we cannot but entertain suspicion, that this confession was procured from the prisoner on the understanding, that he would be used as a witness against the other prisoners. It is therefore impossible, in our opinion, to use it against him; nor can we believe that it contains true evidence of the facts detailed in it. We must therefore acquit all the prisoners.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

KALOONG CACHARREE (No. 1,) AND THAKOR CACHARREE (No. 2.)

Assam.

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Case of KALOONG CACHARREE and another.

Conviction of culpable homicide; another prisoner present convicted of assault.

CRIME CHARGED.—Wilful murder of Musst. Hursaingao.

Committing Officer.—Lieut. B. W. D. Morton, officiating magistrate of Durrung.

Tried before Major Hamilton Vetch, deputy commissioner of Assam, on the 2nd October, 1856.

Remarks by the deputy commissioner.—The prisoner Kaloong (No. 1,) was the fiscal chowkeedar for the mouzah in which the crime is stated to have occurred, and the deceased, a very old woman, occupied a hut next door to her son-in-law, the prosecutor, who deposed that prisoner came and called her, saying, "You have killed my four children by your witchcraft, and I will kill you." When dragging her away, prosecutor called on him to forbear; to this he paid no attention; but fastened the door of prosecutor's house to prevent his egress, no one else was then with the prisoner. In the evening the prisoner Thakor came and showed him a stick with which he said the prisoner Kaloong (No. 1,) had killed the old woman, admitting at the

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same time that he had given her one slap in the face with his hand, and that this had been done in the presence of the villagers Gonda, Seerung, Teperra, Senkha and Somkolloo *alias* Allua, who had been assembled by Kaloong (No. 1;) that after her death he, Kaloong, and Seerung, took the corpse and buried it at Dahola; that Kaloong (No. 1,) came to him, deponent, the following day, confessed that he had killed the deceased and enjoined secrecy, and as he was chowkeedar, prosecutor submitted; but on the arrival of the police jemadar, fearing to conceal the matter, he gave in his *ezar;* that on the prisoners being questioned they confessed further that the jemadar had some bones dug up from the spot where the corpse was buried; adds, that the deceased, although very old, was not in ill-health, and that no one but the prisoner, No. 1, ever accused her of keeping familiar spirits.

Both prisoners pleaded *not guilty* to the charge of wilful murder.

Before the police the prisoner Kaloong (No. 1,) in his confession stated that he dreamt that the deceased had feasted him, after which his four children died, and suspecting that she had obtained their death by witchcraft, it was to question her about it that he collected the neighbours near the house of Seerung, when he went to the prosecutor's whom he told "remain at home," and taking the deceased by the hand pulled her before the assembly, where she admitted that being unable to restrain her familiars, his children were destroyed; enraged at this, he struck her two blows on the back with the stick, whilst No. 2, gave her a slap on the cheek with his hand, which he, Kaloong (No, 1,) followed up by another blow with his stick which killed her; having enjoined secrecy in the neighbours, he, with the assistance of Seerung, made a rope of grass, which they fastened round the neck and hand of the corpse, and dragged it away and buried it at a place in the jungle called Daholah; admits, that the stick produced is the one with which he struck the deceased.

A similar confession was made before the police excepting that prisoner stated that the deceased was not dragged, but called before the assembly.

Before the police the prisoner Thakor stated that the prisoner No. 1, having assembled the neighbours went to the house of the prosecutor and taking the deceased by the hand brought her before them. They questioned her about the causing the death of the children, at first she remained silent, but on No. 1, giving her two blows with the stick she confessed; he (No. 2,) said, "Why have you killed the children by your witchcraft?" and gave her a slap on the cheek, after which No. 1, gave her another blow on the back, which killed her; No. 1, enjoined the parties to secrecy and with the assistance of Seerung made a rope of grass, which they fastened to the neck and hand of

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the corpse and dragged it away to Duholah, and on their return thence they said they had buried it; he, Thakoor, (No. 2,) then went and untied the fastenings of the prosecutor's door and next day told him that the deceased had been killed.

Before the foujdary he made a similar confession, except that he did not know where the body had been put.

Seerung witness.

Witnesses for the prosecution.—Witness Seerung deposed that the prisoner Kaloong (No. 1,) called Somkolloo, Sengkha, Tepperra, Gonda, Thakor and himself and told them to sit down whilst he brought the witch, Musst. Hursainjao, that they might question her touching the death of his four children; he did so pulling her by the hand. On asking her why she had destroyed his four children by her demon or familiar spirit, she denied; but on Kaloong (No. 1,) giving her two blows on the back, (with the stick in court,) she confessed; hearing this the prisoner Thakor (No. 2,) arose, saying, "This is the way you kill folks' children?" gave her a slap on the cheek with his hand. Kaloong (No. 1,) next asked, had she killed any other children in this way? and again struck her on the back with the stick, when she fell backwards and expired. Thakor No. 2, and others went away, and witness was going, when Kaloong (No. 1,) called him saying, The woman has died by my hand, I am guilty, come and bury her. Witness after much persuasion complied, they made a rope of *ooloo* grass, which they fastened round the neck of the corpse, dragged it to Daholah, where they buried it; after the woman's death Kaloong, No. 1, become very dejected and said there was no occasion to tell the village headman or the police as he who had done the deed would do so. All the villagers considered the deceased to be a witch, she was not in ill-health, but extremely old and infirm. The month previous Kaloong's No. 1's four children died, and he suspected her, and on her not confessing he beat her; does not know who gave the information to the police, but being called before the jemadar, he, witness, pointed out where the body was buried and there the bones were found. It is witness's opinion that Kaloong No. 1, fetched the woman with the intention of killing her; Kaloong being the fiscal chowkeedar of the mouza, witness went with him; adds that there was no wound on the corpse.

Sengka, Toperra, Gonda, Somkolloo, witnesses.

Four witnesses with the slight difference as to which hand the deceased was dragged by before the assembly and on the more important point that they did not consider that the prisoner Kaloong No. 1, fetched the deceased to kill her, their evidence is similar to that of the foregoing witnesses.

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Three witnesses prove the confessions made by the prisoners before the police.

Bazun Cacharree,
Taugon ditto,
Seetaram ditto,
witnesses.

Two, the confessions before the joint-magistrate.

Heera Rubba,
Boom ditto,
witnesses.

No. 1, Kaloong, pleads, that laboring under the belief, that the deceased had destroyed his four children by witchcraft, he took and questioned her about having destroyed them through her familiar spirit, she at first denied, but when he beat her she then confessed, and it was to make her drive away the evil spirits, he gave her another blow.

No. 2, Thakor, in his defence, pleads, that on hearing the woman confess, he did give her a slap on the cheek, but he did not kill her.

Verdict of the jury.—The jury returned the following verdict; the prisoner, Kaloong, (No. 1,) guilty of the wilful murder of Musst. Hursainjao. The prisoner, Thakor, No. 2, guilty of assault.

Opinion of the magistrate.—The magistrate would convict the prisoner No. 1, Kaloong, of culpable homicide, and No. 2, Thakor, of assault and has given his reasons* in detail in his English letter.

* Extract from a letter from the officiating magistrate of Durrung, to the deputy commissioner of Assam, No. 11, dated 15th Sept., 1856.

Opinion of the magistrate.—This is a case in which it is exceedingly difficult to arrive at a conclusion regarding the degree of criminality of the prisoners. There are circumstances attending it in weighing which one must pay due attention to the condition and customs of the parties concerned. Were the prisoners ordinary natives, I would have no hesitation in convicting No. 1, of wilful murder, and No. 2, of aiding and abetting in the same, and my only regret would be that it was out of my power to include all the witnesses for the prosecution in the same conviction. Prisoners are Cacharrees, Cacharrees are not only notoriously uncivilised, and consequently superstitious, but are also, *mirabile dictu*, equally noted (comparatively) for their truthfulness. The only part of the evidence I have heard, on which I am at all doubtful, is the statement made by the prosecutor, that Kaloong gave out his intention of killing deceased on his coming for her in the 1st instance. Had he done so the old woman would doubtless have taken steps to prevent his carrying out his professed intentions. Believing then the statement of the witnesses, and that they in obeying Kaloong's call, imagined that they were merely to investigate the truth of certain reports concerned with the children of Kaloong, and affecting the reputation of Musst. Hursainjao, it appears to me incredible that they would have permitted the outrage on the deceased, had they supposed it would end fatally. Again had Kaloong wished to take the life of the old woman, it appears equally incredible that he would have summoned no less than five witnesses to his doing so. Under all these

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Opinion of the deputy commissioner.—It has been clearly established that the prisoner, Kaloong, No. 1, laboring under an impression that the deceased had caused the death of his four children by witchcraft, assembled his neighbours and went to her house, and thence dragged her before them to answer to the charge; on her denying he beat her with a stick after which she confessed, when the prisoner, Thakoor, (No. 2,) irritated at her supposed criminality, gave her a slap in the face; this the prisoner No. 1, followed up by dealing her another blow with his stick, which killed her on the spot; a rope of straw was then made by No. 1, and the witness, Seerung, which they tied round the neck of the corpse, dragged it away and buried on the spot where the bones of the deceased were pointed out to the police. The prosecutor has further deposed that the prisoner, Kaloong, (No. 1,) when questioned, as to why he was taking away the deceased said, that she had compassed the death of his children by witchcraft, and that he would kill her, one of the eye-witnesses has expressed his opinion that the prisoner No. 1, intended to kill the deceased, whilst the other four do not consider that such was his intention. The instrument, a common sized walking stick rather light, would not in ordinary circumstances be a very formidable weapon, but the case is altered when used on a person feeble from great age, and applied by one laboring under the impression that the deceased had been the cause of the death of all his children; all the circumstances considered, I convict the prisoner, Kaloong, No. 1, of wilful murder, and the prisoner, Thakor, No. 2, of being an accomplice, by aiding and abetting in the crime. At the same time, I feel convinced that the prisoner really believed that the deceased had compassed the death of his children, a belief confirmed in him by her extorted confession, for the Cacharrees are a rude and superstitious race, the place remote, and the belief in witchcraft and evil spirits general among them; I am further of opinion, that the present case does not call for extreme punishment, yet that it requires one of such severity as may deter others from acts of the kind, I would, therefore, recommend that the prisoner, Kaloong, (No. 1,) be sentenced to (14) fourteen years' imprisonment with labor in irons, and

circumstances I would convict defendant No. 1, of culpable homicide and No. 2, of assault.

No. 2, could fairly have been tried for and convicted of privity in common with the witnesses for the prosecution, but as the joint-magistrate had not put the latter on their defence (a circumstance which I regret) I have not called on Thakoor for his reply to such a charge, I would sentence defendant, Kaloong, to imprisonment with hard labor and irons for the space of (7) seven years, and defendant, Thakor, to imprisonment with labor for (6) six months.

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that the prisoner, Thakor, (No 2,) be sentenced to (3) three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The report of the deputy commissioner gives very full details of this case; and as the prisoners have confessed their guilt throughout, it is not necessary for us to enter into the details of the proof adduced against them. We think, however, that a very marked distinction may be drawn between the acts of the two prisoners. One of them assaulted the old woman with a stick, and there is no doubt whatever that the blows inflicted by him, though unintentional, as far as life is concerned, were the cause of death. The other is allowed to have merely given her a slap on the face, which could not possibly have been attended with a fatal result. Nor were his feelings in the same excited state to allow of a belief that he intended further harm to the old woman. We think the imprisonment already undergone by him sufficient for the offence, and pass no further sentence on him. As regards the other prisoner, Kaloong Cacharree, we convict him of culpable homicide, and sentence him, as proposed by the deputy commissioner.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT

versus

BUNGSHEE DOSS.

Hooghly.

1856. December 19. Case of BUNGSHEE DOSS KYBERT.

The prisoner was convicted and transported as a professional dacoit.

CRIME CHARGED.—1st count, dacoity on the night of the 4th July, 1846, in the house of Ramcoomar Sircar, of Narichey Gopaulpore, thannah Benipoor, zillah Hooghly, and 2nd count, dacoity, on the night of the 27th October, 1848, in the house of Bissonauth Bose of Kochatee, thannah Bansberya, zillah Hooghly; 3rd count, belonging to a gang of dacoits.

Committing Officer.—Baboo Chunder Seker Roy, deputy magistrate under the dacoity commissioner.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 27th November, 1856.

Remarks by the additional sessions judge.—The prisoner is charged with the dacoities at Narichey Gopaulpore and Kochatee, on the 4th July, 1846, and 27th October, 1848, respectively; and generally with having belonged to a gang of dacoits. He admits the whole of the charges before me as he had previously done in the lower court where he confessed to having been

concerned in eight dacoities besides those specified, the greater number of which were duly reported at the time and are known to have occurred. Some of them have now before me been formally proved to have been committed.

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Both the approver witnesses denounced the prisoner in their confessions to the Kochatee affair before his arrest; viz. on 9th December, 1855, and 5th February, 1856. In the Gopaulpoor dacoity, he was recognised in the act by the witness Dassoo, as was deposed to by him at the time within five days after the occurrence. Others had also recognised him besides Dassoo, who have not been summoned as witnesses. The witnesses Nos. 4, 5, 6 and 7, prove the fact of two of the ten dacoities which prisoner admits having helped to commit; but with which he has not been specially charged.

I beg to recommend that the prisoner be sentenced to imprisonment in transportation for life with hard labor for "having belonged to a gang of dacoits."

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) There is no doubt of the prisoner's guilt. He has confessed throughout, and the evidence for the prosecution establishes the charge against him. We convict him of having belonged to a gang of dacoits, and sentence him to imprisonment for life in transportation beyond sea.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND TAJOO MUNDUL

versus

KULUM KAHAR (No. 10,) AND LALUN BEWA (No 11.)

Nuddea.

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Case of KULUM KAHAR.

Conviction of culpable homicide affirmed on appeal.

CRIME CHARGED.—Wilful murder of Chand Mundul, brother of the prosecutor, Tajoo Mundul.

CRIME ESTABLISHED —Culpable homicide.

Committing Officer.—Mouluvee Yatzad Hossein, deputy magistrate of Nuddea.

Tried before Mr. G. D. Wilkins, additional sessions judge of Nuddea, on the 28th August, 1856.

Remarks by the additional sessions judge.—There was a dispute between prosecutor, the deceased Chand Mundul and Budduroodeen, on the one side; and Zumeer Kahar, Nazir Kahar, Mulum Kahar and the prisoners on the other, regarding the right to cut bamboos in a clump between their respective houses. On the 16th April last, Budduroodeen and the deceased went to cut down the bamboos in dispute when they were met by the prisoners. The male prisoner after a discussion began struggling with the deceased when the latter was felled to the

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ground by two blows; an earthen pot thrown at his head by the female prisoner Lalun and a blow with a very heavy bamboo (snatched for the purpose from the roof of an adjoining house) from the male prisoner Kulum. This last split his skull and he died the following day from the effects of it. It is plain the prosecutor did not see all that occurred, and that the two witnesses Moolook and Komur Shah Nos. 1 and 2, did not really witness the details of the affair as they would have us believe, but otherwise the evidence is unimpeachable and most ample.

Both the prisoners plead *not guilty* and an *alibi*, and have summoned witnesses to support their defensive pleas; but it is quite insufficient to shake the direct testimony for the prosecution. In concurrence with the law officer, I convict both the prisoners of the culpable homicide of the deceased Chand Mundul and sentence Kulum Kahar, to seven years' imprisonment with labor and without irons and Lalun Bewa to six (6) months' simple imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner's only defence is *alibi*, which he has utterly failed to prove, seeing no reason to doubt the evidence for the prosecution, we reject the appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges*.

GOVERNMENT AND NUTEEF CAZY

versus

ALATUN MUNDUL (No. 9, APPELLANT,) GORIBULLAH* ALIAS GOREEB PEADAH (No. 10,) KHAMUR* MOOLLAH (No. 11,) AND ROOPCHAND* NYE (No. 12.)

Rajshahye.

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Case of ALATUN MUNDUL and others.

Conviction of burglary upheld in appeal.

CRIME CHARGED.—No. 9, burglary in the house of Nuteef Cazy; Nos. 10, 11 and 12, knowingly receiving and being in possession of property acquired by the said burglary.

CRIME ESTABLISHED.—No. 9, burglary in the house of Nuteef Cazy.

Committing Officer.—Mr. C. E. Chapman, officiating magistrate of Rajshahye.

Tried before Mr. Lowis Jackson, officiating sessions judge of Rajshahye, on the 5th September, 1856.

Remarks by the officiating sessions judge.—The prisoner, Alatun Mundul, is charged with burglary attended with theft of property valued at Rs. 174.

He was caught *flagrante delicto* by the prosecutor, his companions having escaped upon the alarm given while the prisoner at the bar was still coming out through the "*seend*" a practi-

* Acquitted by the lower court.

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cable breach effected, with a small quantity of silk and a brass pot in his hands.

He was detained and information was given at the thannah, the mohurrir came to investigate the case and before him the prisoner confessed involving three other persons who have been acquitted; I attach little importance, however, to this confession as it is stated by the attesting witnesses that the mohurrir admonished him to state the truth and it would be well for him, *(dhormuta bolilé tor bhála hobé.)*

But the prosecutor distinctly deposes to the fact of apprehending him, which is borne out by witnesses Nos. 1, 2 and 3, who came up immediately afterwards. There are some little discrepancies in the statements of these witnesses, but not sufficient to discredit their testimony; on the other hand a little circumstance which came out in cross-examination, gives a strong air of reality to the case, viz. it is mentioned by Bhundul Paik, that when the prisoner was apprehended, he had about him a sharp instrument called a *chakoo*, which, while in the chowkeedar's charge, he had contrived to throw into a pond, under pretence of washing his hands. The chowkeedar being recalled, admitted the fact, which he had evidently concealed from the police authorities, lest he should be punished for negligence in allowing a piece of corroborative evidence to escape.

This knife or *chakoo* was very likely the instrument with which the prosecutor's wall was pierced.

The prisoner tells a long rambling story of his having gone to the prosecutor's to claim the balance of a debt of 5 rupees, and being detained by the prosecutor, his wife and mother, and this case being got up against him.

He called four witnesses who were examined, one of them Sheroo Chowkeedar, No. 17, only knows that prisoner is a released convict and "*dagi*." Two others Soroop Mundul and Kurreemuddin Mundul, Nos. 18 and 20, found him absent from home, and were told that he had gone to the house of a relative, immediately after which they heard of his apprehension; and the other Adnia Sirdar No. 19, heard on his sick bed that prisoner had been taken up on charge of burglary.

I have no doubt, therefore, of the prisoner's guilt, and as he has been convicted by the law officer's *futwa*, I hereby sentence him to imprisonment with hard labor in irons for five years from this date.

Let the property found upon prisoner be made over to the prosecutor, and the remaining articles to the prisoners in whose houses they were found respectively.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoner, in his petition of appeal, has urged nothing exculpatory. The officiating sessions judge has clearly set forth the grounds of conviction. We see no reason to interfere.

PRESENT :

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND DEGUN ROY

versus

LOKHA ROY (No. 3,) AND SUNEECHUR ROY (No. 4.)

Behar.

1856.

December 19.

Case of LOKHA ROY and another.

The appeal of prisoners, convicted of receipt of stolen property rejected.

CRIME CHARGED.—Having stolen property in their possession well knowing the same to be such, valued at Rs. 28-1-6, acquired by burglary and theft of property valued at Rupees 192-1.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. J. T. Worsely, deputy magistrate of Nowada.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 18th October, 1856.

Remarks by the sessions judge.—A burglary had been effected in the prosecutor's house on 28th August last, and property to the value of Rs. 192-1, carried off. Complaint was duly made and various persons suspected, but with fruitless results, until Sooumber, Chowkeedar of the village, named the prisoners, two brothers residing together in a distant village. On searching their house articles Nos. 3 to 17, consisting of clothes and three silver articles, identified as portion of the stolen property, were found concealed within the prisoner's house and Suneechur Roy prisoner No. 4, was apprehended in the act of running away out of the house as the search commenced with articles Nos. 1 and 2, similarly identified.

Wt. No. 1, Nokha Roy.
" " 2, Dokhun Roy.
" " 3, Pooneet Panday.
" " 4, Ramdial Telee.

Lokha, prisoner No. 3, first called the property his own before the police, and then told the deputy magistrate that Khooblall (witness No. 17,) and Poornaie Roy (witness No. 18,) had asked him to conceal it as theirs; whilst a distraint was out against them. To this story he has adhered before this court and called numerous witnesses both before the deputy magistrate and this court, but one and all including the alleged depositors, witnesses Nos. 17 and 18, deny it altogether. Suneechur Roy prisoner No. 4's defence, before the police, was the same as his brother's and before the deputy magistrate he, in like manner, acknowledged the recovery of the stolen property in their house. His brother knew all about it, he did not, and he set up an *alibi* citing witnesses who, however, failed to attend this court. Any such *alibi*, however, was at variance to his statement to the deputy magistrate that he was out ploughing when their house was being searched.

1856.

December 19.

Case of LOKHA ROY and another.

The jury* unanimously convict the prisoners on the count charged. The defences amount to an acknowledgment of the facts deposed to on the part of the prosecution, and the recovery of the stolen property stands undisputed. Lokha Roy's own inconsistent explanations, independent of his witnesses denying him, assures me that the story set up by him is purely fictitious and therefore there can be no other conclusion than that he was apprehended in guilty possession of the stolen property. Suneechur prisoner No. 4's defence breaks down of itself, and under all the circumstances of the case, there can be no reason to doubt the evidence inculpating him. He is, however, quite a lad about twenty years of age and must have acted under his brother's influence. Concurring in the verdict, I sentence the prisoners as below. Lokha Roy as the most dangerous character of the two, it being persons ostensibly of the more respectable class like Lokha Roy, who make the most mischievous receivers of stolen property.

* Sheikh Hossein Alli, of Teekharee, zillah Behar.
Mullick Niamut Alli, of Puthooree, ditto ditto.
Muhtablal, of Booncadgunj, ditto ditto.
Reykha Singh, of Badrabad, ditto ditto.

Sentence passed by the lower court.—Lokha Roy to seven and Suneechur Roy to five years' imprisonment with labor and irons, the former in banishment and the latter in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoners have urged in appeal, pleas which they did not advance before. It is apparent, therefore, that they have no valid defence. As there is no reason to distrust the evidence for the prosecution, we reject the prisoners' appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

GOVERNMENT AND MOTHOORANATH SIRMAH FOR Mr. W. WAGENTRUBER

versus

NUNDEENATH SIRMAH ALIAS GHEENAI SIRMAH.

Assam.

1856.

December 19.

Case of NUNDEENATH SIRMAH *alias* GHEENAI SIRMAH.

Conviction of forgery affirmed in appeal.

CRIME CHARGED.—1st count, forgery, in altering the amount of a receipted *challaun* for revenue, from Rs. 33-9-8 to Rs. 35-9-8, with a view to defrauding his employer of the difference; 2nd count, in fraudulently uttering the above document knowing it to be forged.

CRIME ESTABLISHED.—Forgery in altering the amount of a receipted *challaun* for revenue, from Rs. 33-9-8 to Rs. 35-9-8, with a view to defrauding his employer.

Committing Officer.—Capt. E. T. Dalton, magistrate of Luckimpore.

Tried before Major H. Vetch, officiating sessions judge and deputy commissioner of Assam, on the 23rd July, 1856.

Remarks by the officiating sessions judge and deputy commissioner.—The prosecutor deposed that the prisoner came to his master, Mr. Wagentruber, and in his presence said there was a demand for Rs. 37-11-8, on account of revenue. By his master's direction he, deponent, wrote an order for 60 Rs. on Kamissur Kyah, out of which the prisoner was told to pay the revenue due, and send the balance to the factory in pice, he took the order and deponent sent a man with him for the pice, prisoner kept for revenue, Rs. 37-11-8, as wages due to himself Rs. 5-4-9, and one anna for *pawn*, sent the balance as directed. Three or four days after, the prisoner came to the factory with the receipted *challauns*, deponent was called and the *challauns* were given to him by the prisoner in Mr. Wagentruber's presence, one for Rs. 35-9-8, and the other for R. 1-7-10, in the former for mehaul Muttuck, the figures appeared altered, this he pointed out to his master, the prisoner said, Yes, this appears altered, but the one in the office is clear, his master asked deponent what they had been altered from, but that he could not make out, the amount was written in two places and both appeared to have been altered. From this, and it not appearing what was meant by Muttuck mehaul, deponent was ordered to make enquiry, the amount shown above is in the writing of the prisoner that below is in a different hand. It was, deponent thinks, the 4th April, that he took the *challauns* to the collector's office for examination, he went first to the podar to look to the entry which he (podar) said was Rs. 33-9-8 not 35-9-8.

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December 19.

Case of NUNDEENATH SIRMAH *alias* GHEENAI SIRMAH.

The treasurer's mohurrir, Bheem, heard this and opened his register, and confirmed it and asked to see the *challaun* which he examined and said it has been altered, " my receipt has been altered." The treasurer came, and hearing what was going on took the *challaun* to the accountant who examined his register which agreed with the treasurer, they then looked for the original of the *challaun* it was for Rs. 33-9-8, without any erasure or alteration.

The jury were unanimous in their opinion of the prisoner's guilt and the magistrate concurred.

On the case coming before this court, and on the representation of the prisoner, it was returned for revision that Mr. Wagentruber might be examined, and the letters alleged to have been written by prisoner were called for, and any further evidence to be afterwards taken for the prisoner's defence.

It has been clearly proved that the *challaun* has been altered, and the amount raised from Rs. 33-9-8 to 35-9-8, and that a forgery has been committed. It is also satisfactorily proved that the prisoner in remitting the balance of the sum out of which the *challaun* was to be paid retained two rupees which were due to his employer, he attempted to account for his having done so by alleging that he sent the balance under the impression that the revenue to be paid might amount to two rupees more, and that he stated this in a letter not forthcoming, and in his first defence alleges that in taking the *challauns* himself to Mr. Wagentruber also delivered a letter explaining that he had two rupees in excess in his hand, and when the case was first committed he petitioned that Mr. Wagentruber's evidence might be taken and the letter produced, the case was returned and the court reassembled to have Mr. Wagentruber's evidence taken and any further defence heard and the letter to be sought for, but Mr. Wagentruber's evidence only goes to strengthen what was before the court, whilst the prisoner has taken up a new line of defence and says the *challauns* and letter were sent to Mr. Wagentruber by a man who had come from him on other business, and to prove this, he has called witnesses to show that it was so, and that the *challaun* was not altered when despatched and that the letter contained the explanation of the two rupees kept back; this story about sending the *challaun* and second letter is opposed to his own statements in first defence, in which he stated that he took the *challauns* himself, and the new evidence brought in support thereof, I consider quite unworthy of credit. I think it quite possible that at first the prisoner may have had some doubts about the exact sum he had to pay as revenue for Mr Wagentruber, and kept back the two rupees, but finding that it was less by that sum, he fraudulently retained them, and to conceal this petty fraud he resorted to the heinous crime of forgery.

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Case of NUNDEENATH SIRMAH *alias* GHEENAI SIRMAH.

The jury in their first verdict were unanimous in convicting the prisoner; in second verdict on revisal of the proceedings, two out of three members acquit him on the ground that the letter has not been produced as it ought to have been, and the third adheres to his former verdict of guilt, the magistrate also adheres to his first opinion and considers the case against the prisoner to have been made stronger by the evidence given by Mr. Wagentruber; the magistrate in committing in the first instance recommends as the minimum prescribed by the law, sentence of three years' imprisonment with labor, but, with reference to the trifling amount involved considers this a very severe punishment and that the case is one in which reference for mitigation might be made.

I am of opinion that the crime of forgery, as set forth in the first of the charges, has been established against the prisoner on violent presumption and I sentence him to be imprisoned for three years with labor from this date. Considering the very petty sum for which this penalty has been incurred, I should willingly have forwarded the magistrate's recommendation for mitigation of the above sentence, but the position held by the prisoner as a mookhtear and the circumstance of his having changed his line of defence, and calling witnesses to disprove what he himself stated in his first defence, precludes my interference.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We consider that the evidence in this case fully sustains the conviction and therefore reject the prisoner's appeal.

PRESENT:

B. J. COLVIN AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND SIDAM SIRMOKAR

versus

HASIL SIRDAR (No. 1,) FURAHATOOLLAH SIRDAR (No. 2,) ALLI SIRDAR (No. 3,) KALLOO SHEIKH (No 4,) NEPAUL SHEIKH (No. 5,) AND MONEEROODIN SIRDAR (No. 6.)

Nuddea.

1856.

December 19.

Case of HASIL SIRDAR and others.

The evidence to recognition was thought satisfactory, conviction on recognition and discovery of stolen property affirmed.

CRIME CHARGED.—1st count, dacoity in the house of Sidam Sirmokar, in which property to the amount of rupees 209-10-5 was plundered; 2nd count, prisoners Nos. 1 to 3, receiving and keeping in their possession a part of the property knowing the same to have been obtained by the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Moulvee Yatzud Hossein, deputy magistrate of Nuddea.

Tried before Mr. R. M. Skinner, officiating sessions judge of Nuddea, on the 8th September, 1856.

Remarks by the officiating sessions judge.—The evidence for the prosecution shews that plaintiff's house was attacked by dacoits, plaintiff ran off and so did witness No. 24;* but the chowkeedar witness No. 1, and witnesses Nos. 2 to 8,† identified the prisoners by torch light, the names of prisoners Nos. 1, 2, 3 and 6, were given at the thannah, on the morning after the occurrence, and, on that day, in the *sooruthal* on the spot, all the prisoners were named and a brass *lotah* and an oil cup were found‡ in the house of prisoners Nos. 1 and 2, who are brothers, and silver earrings were found in the house§ of prisoner No. 3, and proved|| to belong to plaintiff. The prisoners have failed to prove how they came by these articles.

The circumstances of the occurrence of the dacoity and the prisoners having been named by different witnesses, on the night of the dacoity, are corroborated

* No. 24, Shrimunt Sirmokar.

† No. 2, Hurolal Podar,
,, 3, Bhim Sirmokar,
,, 4, Bunomali Sirmokar,
,, 5, Jadoo Podar,
,, 6, Ukhay Sirmokar,
,, 7, Gopal Sheikh,
,, 8, Ameer Sheikh.

‡ No. 16, Chand Kareegur,
,, 17, Mokoor Kareegur.

§ No. 19, Laulchand Biswas.
,, 20, Ameer Mundul.

|| No. 3, Bhim Sirmokar,
,, 6, Ukhor Sirmokar,
,, 22, Horish Sirmokar,
,, 24, Shreemunt Sirmokar.

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Case of HASIL SIRDAR and others.

by evidence of 6 witnesses.* Prisoners Nos. 1, 2 and 4, were captured in paddy-fields by witnesses Nos 10 and 11;† prisoner No. 5, in the house of Khosal by witness No. 12.‡ The testimony for the defence altogether fails to exculpate any of the defendants. I convict the prisoners of dacoity, and sentence each of them to (7) seven years' imprisonment with labor in irons and to pay the value of the property plundered, but not recovered, viz. Rs. 208-8, to plaintiff.

* No. 25, Shostiram Sircar,
„ 26, Ishur Sirmokar,
„ 27, Noby Biswas.

† No. 10, Johif Khan, Burkandaz,
„ 11, Agro Khan, ditto.

‡ No. 12, Gomani Chowkeedar.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin and J. H. Patton.) We see no reason to interfere with this conviction. Besides, the evidence to recognition of all the prisoners, which, under the circumstances, is very trustworthy, the property of the prosecutor was found in the houses of the prisoners Nos. 1, 2 and 3. The witnesses on behalf of the prisoners prove nothing in their favor, and the prisoners in their answers admit having been frequently taken up on suspicion.

The prisoners' appeal is rejected.

PRESENT:

H. T. RAIKES AND J. H PATTON, ESQS., *Judges.*

GOVERNMENT

versus

LUKHIKANT GHOSE (No. 2,) RAMCHAND SIRCAR (No. 3,) ASSIMOODHI KHALASI (No. 4,) JOYNARAIN BISWAS (No. 5,) MUDHOOSOODUN BISWAS (No. 6,) DAIMOOLLAH NULOOA (No. 7,) SUMIROODHI (No. 8.)

Jessore.

1856.

December 31.

Case of LUKHIKANT GHOSE and others.

Appeal rejected.

CRIME CHARGED.—1st count, affray, attended with the murder of Ramkoomar Chuckerbutty, on the 16th of April, 1856, corresponding with the 5th of Bysack, 1262, B. S.; 2nd count, affray, attended with the wounding and carrying away of Ramkoomar Chuckerbutty.

CRIME ESTABLISHED.—Affray.

Committing Officer.—Mr. E. W. Molony, magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 4th September, 1856.

1856.

December 19.

Case of LUKHIKANT GHOSE and others.

Remarks by the officiating sessions judge.—The cause which seems to have occasioned the affray is the existence of two *hâts*, those of Rajapore and Rajgunge, which are in close propinquity, the former belonging to a Mr. Robert Savi of the Nowhatty indigo concern, and the latter to Nundcoomar Moonshee, a talookdar. The prisoners Nos. 2, 3 and 4, are of Mr. Savi's party and prisoners Nos 5, 6, 7, and 8, of the talookdar.

The *hâts* are held on the same days, and hence necessarily no small amount of rivalry and competition is occasioned, and to get customers to their respective *hâts*, where persuasion is unsuccessful, force is resorted to. The police appear to have been aware of this state of things, and two burkandazes, witnesses Nos 1 and 2, were deputed on the day of the affray to keep the peace. With the promiscuous multitude, however, assembled, some of them with spears and *lattees*, these two policemen soon found themselves incompetent to deal. When in one direction keeping those assembled in peaceable order, squabbles and scuffles were taking place in another, in the paths, &c, leading to these *hâts*. Every villager on his way to make purchases at either of the *hâts*, was accosted roughly by either one or other party, and forcibly taken to the *hât* in which the party who got hold of him was interested.

The policemen, witnesses Nos. 1 and 2, affirm they did not witness any actual affray, but that when the talookdar's people came to tell them that Mr. Savi's party had wounded severely and were taking away one Ramkoomar Chuckerbutty, that they then tried to get up to them, but were soon surrounded and unable to move on. They say they saw, however, some parties dragging a person along the ground, but who and whether he was wounded, they were unable from the distance they were detained at, to distinguish.

The witnesses Nos. 3, 4, 6, 10, 11, 12, 13 and 14, are all independent parties, in no way connected with either Mr. Savi or the talookdar. Their statements on all material points agree. They were all from different quarters going to one or other of the *hâts* when they witnessed a considerable assembly of *lateewals* and villagers with bamboos in their hands. They were told to go to this or that *hât* by the one or the other party they met. They saw the belligerents scuffle and fight and heard, but did not witness, that two persons were injured. They did not learn their names, nor have they since heard who they were.

They did not see the police where the fighting was going on, but recognised the accused among the assembled parties. The witnesses Nos. 15, 16, 17, and 18 are all dependants and ryots of the talookdar. They aver to having seen Mr. Savi's people wound Ramkoomar Chuckerbutty mortally with a spear and drag away his corpse. According to their statements about five hundred of Mr. Savi's party were assembled, but none on the part of the talook-

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dar. Ramkoomar Chuckerbutty is not in any way concerned with the talookdar, but these witnesses avow he, with some others, went up to Mr. Savi's people to dissuade them from resorting to any violence when he was thus made away with. It is in evidence also that Ramkoomar is a resident in zillah Hooghly and not at all interested in the *hâts* or the lands around them where the affray occurred.

The prisoners all plead *not guilty* and in defence an *alibi*, in support of which, they have cited witnesses.

The *alibi*, supported as it invariably is in this country by witnesses, all of the poorest classes, unable to write or read and ignorant even of the date of the day, of the month on which they are giving their depositions, cannot, but on very rare occasions, be credited, as the witnesses in the manner they give their depositions, the distinctness with which they relate the minutest details, mostly, immaterial, when in any way connected with the point they are called on to prove, and their utter ignorance on all other subjects, when subjected to cross-examination, show to the most inexperienced observer, that they have been tutored, and that with no little trouble. In few countries probably is the sanctity of the oath, or solemn affirmation, so little respected as in Bengal, where suborned parties are to be procured for the merest pecuniary trifle.

The trial was conducted under the provisions of Regulation VI. 1832, with the aid of a jury, who return a verdict of guilty on the minor charge of affray only, as they do not credit the statements of witnesses Nos. 15, 16, 17 and 18.

I am not surprised at the verdict, as the testimony of the witnesses Nos. 15, 16, 17 and 18, was given in a manner, that, to my mind, carried the strongest suspicion of their being suborned. Each and all of them had evidently a story ready-made to tell, which the slightest interruption, by way of a question, was sure so to disconcert them in the thread of their narration, of that they had to commence *de novo*, to enable them to conclude their well-remembered account.

On the testimony of the independent witnesses I convict the prisoners of an affray, and with reference to constructions Nos. 301 and 391, sentence each of them to imprisonment with labor for one year and to a fine of Rs. 200, commutable, if not paid, to a further period of imprisonment with labor for one year. The labor, as regards both periods, is to be commuted on payment, within seven days of the commencement of each period, of a fine of Rs. 50, or in default, the prisoners are to be subjected to labor until the fines are paid, or the completion of the terms of their respective sentences.

The magistrate was not, I consider, injudicious in committing the accused, crediting, as he evidently did, the testimony of wit-

nesses Nos. 15, 16, 17 and 18, and deeming their evidence supported by the police statements. 1856.

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I am sorry that more searching enquiry was not made to discover if Ramkoomar Chuckerbutty is still in zillah Hooghly. His not being seen or heard of in Rajgunge is not extraordinary. He was a mere stranger to the locality, had not a permanent residence there, and even his own brother, witness No. 20, had not till lately, he asserts, seen him for several years. Why such a stranger should have been the victim to the fury of Mr. Savi's people, is unexplainable, and I fear can only be accounted for by presuming the account of his death to be a gross falsehood, got up to exaggerate the features of the case. As a resident of another district, Ramkoomar's name was introduced in the hope the detection of the deception might be the more difficult.

Remarks by the Nizamut Adawlut.—(Present : Messrs. H T. Raikes and J. H. Patton.) The direct evidence, on which the sessions judge relies, is sufficient for the conviction of the prisoners to the extent of having participated in the affray which forms subject of the charge against them. We, therefore, see no reason to interfere with the sentence passed upon them.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND MUSST. DOOKHNI BHOOMIJANI

versus

GOOROOCHURN.

Chota Nagpore.

1856.

December 31.

Case of GOOROO CHURN.

CRIME CHARGED.—Wilful murder of Musst. Kowsoolley, his concubine.

Committing Officer.—Captain J. S. Davies, senior assistant commissioner of Chyebassa.

Tried before Captain W. H. Oakes, deputy commissioner of Chota-Nagpore, on the 6th November, 1856.

Prisoner convicted of committing murder, while intoxicated; and transported.

Remarks by the deputy commissioner.—From the evidence of Musst. Sadho witness No. 11, it appears that the prisoner and Musst. Kowsoolley, the deceased, who was his concubine, both lived at the village of Kasda, but had come to the house of the prisoner's brother named Kishto Soondee, in the village of Buhrajooree. On the night of the 11th August last, the prisoner and the deceased were alone in Kisto's house, Kisto being absent from home, and his wife Musst. Sadho, witness No. 11, having gone to sleep at a short distance off in the house of her brother-in-law Dhunnoo. On the following morning,

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Musst. Sadho, witness No. 11, came to awake the prisoner and the deceased, to come to work, but hearing from the prisoner that his concubine was dead, and having seen the corpse, she went and reported what had occurred to Binnud Sirdar, who came with his pykes and found the prisoner in the house with the body of the deceased; prisoner on being questioned, confessed that he had killed his concubine and pointed out the piece of split wood with which the blow had been inflicted on the side of her neck and head.

Chyn Sirdar, No. 1, and Chytun Pyke No. 2, state that they went and found the prisoner near the body of the deceased, and that prisone confessed his guilt.

The witnesses as per margin* depose to the *sooruthal*, and assert that the deceased died from a blow on the side of her neck and head, which appeared to have been inflicted with a piece of split wood.

* No. 1, Chyn Sirdar,
" 2, Chytun Pyke,
" 3, Kristo Bhooria,
" 4, Juggurnath Koomar.

The following witnesses No. 1, Chyn Sirdar, No. 5, Mohun, No. 6, Jeetoo, No. 7, Sonatun Koomar and No. 8, Noyan Pyke, depose that the prisoner confessed voluntarily before the police.

Witnesses Gopal Lall, No. 9 and Auskurn Lall, No 10, prove that the prisoner made a free confession of his crime before the senior assistant at Chyebassa.

Futtoo Bhoomij, No. 12, states that he was sent by a woman named Lallmunee, who also cohabited with the prisoner at Kasda, with a bottle of *sharab*, which he made over to the prisoner at Buhrajooree.

The prisoner before the police and senior assistant commissioner said, that he was intoxicated, and that he and the deceased were on a *charpoy*, and having had an altercation with her, he struck her with the split piece of wood, upon which she began to move in a convulsive manner and he pushed her off the cot, and that she fell on the ground and shortly after died.

Before the sessions judge the prisoner has retracted his previous confessions.

The jury* find the prisoner guilty of the charge of wilful murder.

In this finding I agree. That the deceased was killed by the prisoner does not admit of a doubt, as it is proved by his voluntary confessions both in the mofussil and also before the senior assistant.

The prisoner asserts that he was intoxicated at the time he committed the deed. That he had been drinking may fairly

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* Ramkanhye Roy, Mokhtear.
Ukhoury Injori, ditto.
Lalla Gujrah Singh, ditto.

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be believed as the witness Futtoo Bhoomij took him a bottle of *sharab*, and the bottle was found empty near the deceased, but that he was intoxicated I do not credit, as he is able to give a clear account of what occurred. The only provocation the prisoner alleges to have received was, that the woman made use of abusive language towards him, upon which he took up the piece of split wood that was near him and inflicted a most severe blow, by which her neck was broken. As the instrument employed was of such a nature as to be likely to cause death, and great force must have been exerted, and as the prisoner had received by his own account but slight provocation, I am unable to look upon the crime of the prisoner as less than murder, and therefore recommend that a capital sentence be passed on him.

Remarks by the Nizamut Adawlut.—Present Messrs. H. T. Raikes and J. H. Patton.) There is every reason to believe that the prisoner had been drinking and was excited by liquor when he committed the murder charged; and although intoxication cannot be regarded as ground of extenuation where previous malice or premeditation may be at all presumed, we consider it may be so far allowed weight in the present case as to account for the sudden and violent exasperation felt by the prisoner, which induced him, without a moment's reflection, to take up the rough piece of wood, which happened to be within his reach, and to use it with such reckless violence though he must now be deemed responsible for the fatal consequences which ensued. We convict the prisoner of wilful murder, and sentence him to transportation for life.

PRESENT:

H. T. RAIKES AND J. H. PATTON, ESQS., *Judges.*

GOVERNMENT AND KASISWUR BOSE

versus

MUDUN MUNDUL.

Jessore.

1856.

December 31.

Case of MUDUN MUNDUL.

Under the circumstances conviction of privity to the commission of a dacoity reversed in appeal.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, Kasiswur Bose, and plunder of property belonging to him valued at 13,836 Rupees, and belonging to Hurolal Bose and others Rupees 2,349-8 annas, in all Rupees 16,185-8, on the night of the 5th April, 1856, corresponding with the 24th Cheit, 1262, B. S.; 2nd count, riotously attacking the house of the prosecutor and plundering therefrom property mentioned in the 1st count.

CRIME ESTABLISHED.—Being privy to the commission of the dacoity.

Committing Officer.—Mr. E. W. Molony, magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 25th September, 1856.

Remarks by the officiating sessions judge.—The details of the occurrence are fully related in the remarks* on the acquittal of certain of the prisoners committed for trial in this case.

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* *Remarks by the officiating sessions judge, in the statement of acquittals.*

This serious case occurred as far back as the 5th April last, and according to the statements of the aggrieved party, Kasiswur Bose, and the witnesses to the fact, Nos. 1 to 8, was committed by no less than 50 to 60 dacoits, all armed more or less and carrying with them 10 to 12 lighted mussals. The complainant is a gomashtah of a Mr. Bell, an indigo-planter in Jessore, and states that on the night in question, he was awoke up by the dacoits breaking into his house. He managed to slip into a quiet corner unperceived by the dacoits, and there witnessed their proceedings, recognising several, among whom were the prisoners Nos. 1, 2, 3, 4 and 5. The ruffians gutted his house, opening all the boxes and securing to themselves the property valued at the large sum of Rs. 16,185-8. It consisted, however, of Rs. 8,895 in cash and the remainder in gold and silver jewels, &c., Part of the property valued at Rs. 2,349, belonged to complainant's younger brother. The complainant states that he keeps four nigabans, but what is rather remarkable, not one of them was on the premises on this night of the dacoity, three having gone away as the rain had brought down their houses, and the fourth having gone to the sudder station. The complainant's residence being near to a police station, the police mohurrir arrived at the spot the following morning and commenced the enquiry. The darogah soon after came also to the spot. The complainant's deposition was taken down, and the houses of those parties mentioned in his statement at once placed under surveillance. After arriving at this stage of the enquiry, the

Against the prisoner, No. 6, is a combination of circumstances, which, coupled with his own admissions before the police and the magistrate, tend to his conviction of being privy to the perpetration of this dacoity.

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police and the complainant gave different versions of how matters proceeded. The darogah reports that he could not get the complainant's witnesses, Nos. 2 to 8, to give their depositions until the 10th April, though he repeatedly sent for them.

The complainant in a petition to the magistrate, dated 15th April, states the darogah would not take down the deposition of his witnesses.

The evidence for the prosecution against the prisoners, Nos. 1, 2, 3 and 5, consist solely of that of eye-witnesses. These parties, moreover, not only aver that they distinctly recognised the prisoners, but many others. In fact to judge from their statements, they must have quietly looked on, taking their observations without fear of being seen by the dacoits and with the utmost self-possession and scrutiny. They state the dacoits had all more or less their heads covered over with a cloth tying round by the chin, but that their features were to be distinguished, and that by the light of the *mussals*, for it was a dark night, they clearly recognised them, having known them before. The prisoners Nos. 1, 2, 3 and 5 have all along pleaded *not guilty*, and that the charge brought against them is malicious and false, as they are dependants of one Soroop Bayany with whom the complainant's master, Mr. Bell, has a long-standing dispute. Several witnesses are cited by the prisoners to certify both to the fact of the enmity existing, and to their being men of honest character.

It is to be observed the complainant has charged Soroop Bayany and the family of Seikdars, men of wealth living in his neighbourhood, with being the instigators, and in fact principal actors in this dacoity.

On first taking up the case, I was disposed to consider the crime with which the accused are charged might come under the denomination provided for in Circular Order No. 80, dated 9th March, 1850, but from the statements of the prosecutor and his witnesses, it is clear that the persons who attacked his house, came out with the mere intent to beat him or his relatives, or to carry away any person or prevent a marriage. Robbery and plunder was the sole intention, for there is no evidence on the record that any parties were severely beaten. It is said the prosecutor's father and brother were a little injured, but they have not come forward themselves to say so.

I cannot bring myself to believe that any persons could, with precision, distinguish and remember so many parties as the complainant and his witnesses depose to having seen on the night of the dacoity. It militates also against the credibility to be attached to the evidence of the eye-witnesses that they did not give their depositions for five days after the occurrence. Their evidence is also open to the suspicion that they may be biassed against the accused, for some are servants to the complainants and others though they do not admit they are his dependants, there are reasons for suspecting them to be his partizans. I therefore acquit the prisoners Nos. 1, 2, 3 and 5.

The evidence against the prisoner No. 4, is that of the eye-witnesses Nos. 1, 2, 3, 4 and 5, the same parties who recognised more or less all the accused persons, and that of witnesses Nos. 12 and 6, who identify property No. 1, a silver *bala*, found in the prisoner's house, as belonging to the complainant.

The prisoner has all along pleaded *not guilty*, and lays claim to the silver *bala* as his own. It was found on the person of his nephew, a child, on

1856.

December 31.

Case of MUDUN MUNDUL.

His name was first mentioned on the 10th April in the depositions of witnesses, Nos. 6 and 8. I am not, however, disposed to place any confidence in this testimony for the reasons above detailed.* On the 12th April, the prosecutor brought the prisoner to the darogah as one willing and able to give desirable information. Under the circumstances that the prisoner was charged as being one of the offenders, the darogah declined receiving any statement from him, and reported his proceedings to the magistrate. No orders, however, were given on the subject. The prisoner was a domestic servant of Bulram Seikdar, one of the parties suspected by the prosecutor as the instigator of the dacoity. Again on the 11th July, the prisoner came to the nazir of the magistrate's court, who was specially deputed to enquire into the case, stating he was prepared to make a confession. It was taken down and from the information afforded in it, the house of the accused, No. 7, was searched, and several articles of property, Nos. 6 to 16, found, which both the complainant and the accused lay claim to. The prisoner No. 6, was then forwarded

* In trial No. 3, statement No. 8.

the 7th April, two days after the dacoity. The prisoner was present at the time and his house is within a short distance of the complainant's. The prosecutor, on the *bala* being discovered, did not at once bring forward any evidence to prove it to be his own, and in his list of the plundered property it is not described with any precision, nor were any distinguishing marks, defects, &c. specified, though a very apparent one was visible, one of the flowers on the fastening being deficient.

The witnesses both for the prosecution and defence mention now this defect as the mark they can identify it by. The "*onus probandi*" rested on the complainant. I cannot consider he has at all conclusively supplied it, and as I do not credit the statements of the eye-witnesses Nos. 1, 2, 3, 4 and 5, I release the prisoner No. 4, and direct that the silver *bala* found in his possession be restored to him.

The accused No. 7, I acquit and direct that the articles of property Nos. 6 to 16, found in his possession, be restored to him. The complainant has not brought forward any conclusive evidence to show the articles, Nos. 6 to 16, are his own. In his list of property plundered, no kind of concise and clear description is given of the articles, and in fact those numbered 9, 10, 14 and 16, do not tally with the list. The magistrate, in his abstract of the examination grounds, points out several discrepancies in the evidence brought forward by the accused to identify the property, but he omits to mention that discrepancies equally irreconcileable occur in the evidence of identification for the prosecution. It is proved the accused is a man of unblemished character, of wealth and not likely to allow himself to be the dupe of others. The story of the prisoner No. 6, that led to the searching of the accused's house, though possible, is not probable, and I cannot consider it is at all established by the recovery of property, the complainant cannot at all conclusively identify as his own.

I do not call in question the propriety of the commitment as the magistrate seems to have placed entire confidence in the evidence for the prosecution, which, if credible, was ample to convict most of the prisoners on. The trial was conducted under the provisions of Act XXIV. 1843, Section 3.

to the magistrate, and before him made another admission fully implicating himself as being privy to the crime, but in many particulars, quite inconsistent with his previous admission before the police. It is clear the prisoner is a cunning, dishonest rogue, and probably played his part to secure the reward offered by the magistrate for the discovery of the offenders. I convict him on his own confession before the magistrate, which was proved to have been given voluntarily and without any compulsion and persuasion, of being privy to the commission of the dacoity, and sentence him to imprisonment with labor for three years; the labor to be commuted on the payment, within one month, of a fine of Rupees 50, or in default, the prisoner to be subjected to labor until such fine be paid, or if not paid, until the completion of the term of his sentence. d

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. he
Raikes and J. H. Patton.) We observe that all those charg his
with the commission of the dacoity have been released by relied
sessions judge, and the prisoner was convicted of privity the pri-
own admission. We find, however, that the admissio of the com-
upon by the sessions judge is not sufficient to warran hbour of the
soner's conviction on such a charge. His knowledg ed, whose out-
mission of the crime arose from his being a nei also appears that
person in whose house the dacoity was comm ice, but the darogah
cries attracted him and others to the spot. the parties suspected.
he was ready to give information to the putation of wishing to con-
would not receive it, as he was one sessed of; and it is not prov-
This, however, clears him from the i in the crime, if, indeed, the da-
ceal such knowledge as he was po acquit the prisoner.
ed that he is further implicate
coity was ever committed.
